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MRS. KEITH FALKNER

IN MEMORY OF HER FATHER

HARRY MILL LANCASTER

George S. Bamisford
Xmas 1854

MEMOIRS

OF THE

RIGHT HONOURABLE

HENRY LORD LANGDALE.

By THOMAS DUFFUS HARDY.

IN TWO VOLUMES.

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MEMOIR

OF

HENRY LORD LANGDALE.

CHAPTER I.

LORD LANGDALE IN THE HOUSE OF PEERS.—TAKES CHARGE OF VARIOUS IMPORTANT BILLS. — HIS INDEPENDENT COURSE.— MEMORANDUM ON LAW TAXES.

It is now necessary to view Lord Langdale as a member of the Hereditary Legislature and on the Bench.

It has been seen that he unwillingly accepted the Peerage, and he was little prominent in the House of Lords; as he thought it inconsistent with the dignity or sacredness of the office of judge to meddle with politics. He, therefore, abstained from entering into all political and party questions. The days are happily gone when the judge was selected for his political tendencies, and when, in order to hold his place, which was granted *durante bene placito*, he found it necessary to carry his partizanship beyond the bounds of strict judicial propriety.

Whenever Lord Langdale attended the House of Peers, or spoke in that assembly, which on the whole was not more than thirty times, it was always upon points connected with the administration of the law; and several important and beneficial acts were passed under his advice and superintendence.

As early as January, 1836, he was requested by Lord Melbourne to see to the preparation of several bills that Lord Brougham had undertaken to introduce, but which the state of his health prevented. Lord Langdale cheerfully complied, as is seen by the following letter to the Premier:

10, Upper Grosvenor Street, Jan. 30th, 1836.

"My dear Lord,

"I will take the earliest opportunity of conferring with the Attorney-General on the several bills which you mention, and on every occasion in which legal reform is in question, your Lordship may be assured that I will give the best attention in my power to the subject.

According to my present impressions the Bill for Regulating the Execution of Wills, is, if not quite, very nearly in a fit state to be safely and properly recommended for adoption. The Bill for Abolishing Imprisonment for Debt, though right in principle, does not (at least the last form of it which I have seen) appear to me, to provide the requisite machinery for the effectual and faithful realization and distribution of the assets of the insolvents. If I correctly remember, that defect was in some degree admitted, and attributed to the rejection of the Local Courts Bill. And as to that

bill, it does not appear to me, that it has been reduced to a form in which it can be recommended. The establishment of local courts is, in my opinion, absolutely necessary for the due administration of justice; but they will require many safeguards, which do not seem to have been sufficiently considered. The present state of the law is such, that if administered by numerous judges, there would necessarily be great conflict of decision and great confusion, and there are no adequate Courts of Appeal. A simplification of the law to be administered, in order that the local judges may have easier rules for their guidance, and an establishment of Appeal Courts by which mistakes (which, after every caution has been applied, will unavoidably be made) may be cheaply and speedily corrected, appear to me necessary for the safe establishment of local courts, and I conceive that though something may be done towards recommending the subject, which is, no doubt, of the utmost importance, for the ensuing session, it would not be prudent to bring in the bill.

I say nothing of the Prisoners' Counsel Bill, as your Lordship purposes to leave the commencement of that to the House of Commons.

I have the honour to be, my dear Lord,

Your faithful and obliged servant,

LANGDALE.

The Lord Viscount Melbourne, &c."

Soon after his elevation to the Peerage he addressed the House on the introduction of Lord Chancellor Cottenham's two Bills for reforming the Court of Chan-

cery and the appellate jurisdiction of the House of Lords and Privy Council.

Lord Langdale, who then spoke for the first time as a member of that House, admitted that though the two Bills were calculated to effect much good, yet political and judicial functions of the greatest importance would still be left united in the Lord Chancellor ; and an appellate and an original jurisdiction would still remain united in the Lord Chief Justice of the Court of Chancery; that is, a court of appeal would be left between the original hearing in Equity and the appeal to the House of Lords. These he considered were points of grave importance, and he thought it respectful to the Lord Chancellor at once to state that he intended to bring them seriously under the consideration of the House at a future stage.

Lord Langdale's speech gave great offence to the Chancellor, and some dissatisfaction to the Cabinet, Lord Melbourne alone excepted, for he knew that when Mr. Bickersteth consented to take the Peerage, it was upon the express condition of being entirely unfettered in his opinions and actions; he also knew, and so indeed did the rest of the Cabinet (for they had read, or at any rate had the opportunity of reading, the statements which Mr. Bickersteth drew up on the reforms necessary to be introduced in the Court of Chancery)* that he did not approve entirely of Lord Cottenham's measure, which he thought too circumscribed in its operations. On this occasion it was said that " he deserted his party the first opportunity he had;" but that is an

* Printed at p. 424, vol. i.

unfair accusation, for he could not desert what he had never joined.

On the second reading of Lord Cottenham's Bill, on the 13th of June following, Lord Langdale made his memorable speech, and fulfilled all that had been anticipated of him by his most ardent admirers; he proved that he had a judicial mind of the first order, capable of embracing within its comprehensive grasp the whole field of English law.

It seemed to be the general opinion of persons interested in Chancery Reform, that had he been allowed to bring forward a measure framed upon his own principles, it would have met with a different fate to that of the Lord Chancellor's.

If Lord Cottenham was displeased with the speech made by the Master of the Rolls when the Bill was read the first time, he was doubly mortified at his speech on the second reading, in which he gave a very qualified approval of the measure.

The next speech of any length that Lord Langdale delivered in the House of Peers was on moving the second reading of the Bill for the Amendment of the Laws respecting Wills. It was founded on the recommendation of the Ecclesiastical and Real Property Commissioners, and was drawn up by Mr. John Tyrrell, of whom mention has been made, and brought into the House of Commons in 1834, and there referred to a Select Committee. In the following year it was again introduced into the House of Commons, and referred to a Select Committee; from the Lower House it was brought up to that of the Peers, where it was read once,

and referred to a Select Committee, and in 1836 Lord Langdale moved the first reading of the Bill. He had every reason to believe that great pains had been taken to investigate the subject fully, yet as he was of opinion that in such a case no caution could be superfluous, he caused several copies of the Bill to be sent to the most eminent men engaged in the different branches of the law for their suggestion and opinions. These he carefully considered with Mr. Tyrrell, and made, in consequence, such alterations as he deemed necessary.

The object of the Bill was to collect the provisions of the several statutes relating to wills into one Act of Parliament, and at the same time to make in these provisions such modifications as may afford additional securities for the prevention of spurious wills, and additional facilities for making genuine wills. This Bill soon afterwards passed into a law, and it is generally called Lord Langdale's Act, as he conducted it through the House of Lords, although it was drawn by Mr. Tyrrell. It has not worked well: for it has encouraged people to attempt the troublesome task of making their wills themselves, and from carelessness even more than ignorance, intestacies are now continually occurring which the employment of a professional man under the old system would have avoided.

The next occasion on which Lord Langdale addressed the House was the second reading of the Common Law Courts Bill, on the 30th of June, 1837. He said he could not do otherwise than give his assent to the second reading of this Bill, which, in many respects, is an improvement on the Bill last year introduced on the

same subject. At the same time, however, there were one or two objections which he entertained to the details of the Bill, and which it would be very desirable to get rid of. With reference to the objection which had been made elsewhere that the Bill went to appoint five principal officers, whereas the Commissioners in their report, only recommended four, it seemed to him much more desirable that a Court should have too many officers than too few, in order to avoid delay. However, this objection was not improperly taken; but he did not think that any evil would arise out of the alteration, as one of the clauses required that the Judges shall certify in a particular manner, when any vacancy is proposed to be filled up, that it is necessary to appoint some one to it. The principal difficulty, however, which he found in the Bill was in the clauses relating to compensation, for it appeared to him to be unjust to impose the expense of such compensation on the persons who are hereafter to become suitors. It was provided by the 18th clause that the salaries of the officers and the compensation allowances should be paid out of the Fee Fund; throwing the whole burden and the whole expense on the suitors. In his opinion, the fees ought to be reduced to such a point as will be sufficient to pay the general expenses of the Court, and the compensation should be paid out of the Consolidated Fund. He objected also to the recognition given by this Bill to the legality of selling offices connected with Courts of Justice, and he maintained that such offices, although often sold, never are by law saleable, and, therefore, no compensation ought to be given for them under such a notion.

The subject was again brought before the House on the 14th of July, when Lord Langdale moved the order of the day for the House to go into Committee on this bill, and on clause 10 being proposed, he stated his opinion that the expense of the judicial establishment and its officers ought to be supported by Government. The Lord Chancellor and the Lord Chief Justice dissented; and the former asked whether it was not just that the suitors who set the machinery of justice in motion for their own benefit, should contribute to the cost of it; and the latter asked if he, Lord Langdale, thought that all litigation was *bonâ fide*, and if the Court ought not to have the means of punishing vexatious litigation by imposing costs?

"There is a bad report of the debate in the 'Mirror of Parliament,'—the subject is not even mentioned in 'Hansard'" says Lord Langdale, in his diary. In consequence of these questions, this imperfect and unfinished paper was written in the following month of September.

EXPENSE OF JUSTICE—LAW TAXES.

"Justice is the security which the law provides us with, or professes to provide us with, for everything we value or ought to value —for property, for liberty, for honour, and for life."

It is the admitted duty, and certainly the plainest interest of the Government, to provide the people with the protection of the law, *i.e.*, with justice, for without it there can be no security for peace, no enjoyment of happiness.

It being, therefore, the duty of the Government to provide courts of justice, judges, and ministerial officers, by whose agency justice may be administered, a question is made, whether it is for the general interest that the persons who are to be supplied with justice when they have need of it, should have it at a cheap, or at a dear rate? All expense cannot by any means be avoided; but upon the determination of the question, whether it is for the general interest that justice should be administered cheaply or dearly to those who have an occasion to apply for it, depends the solution of this other question, Whether so much of the expense of administering justice as is incurred by Government in providing the necessary establishment ought or ought not to be ultimately sustained by Government.

Now, as it cannot be for, but must be greatly against, the general interest, that any man who has suffered a wrong should be without a remedy for it; as the very existence of wrong, however small, without remedy, tends to general dissatisfaction and disturbance, and leads to that wild sort of justice which is sought to be procured by acts of revenge, it follows that there ought to be not only no denial of justice, but no discouragement to the pursuit or demand of justice; and as expense is undoubtedly a discouragement to the demand, the necessary consequence is, that the expense ought to be reduced to the lowest possible degree.

To the proposition thus stated, scarcely any objection has been made. But two arguments are used which are said to lead to an opposite conclusion.

I. It is said that the demandant of justice asks for a

service, he asks for a benefit to be conferred upon him; the means of affording that benefit are provided by Government; but "the burthen of the establishment ought to lie on those who reap the benefit." "Is it not just," asked Lord Chancellor Cottenham, "to make him who sets the machinery of justice in motion for his own benefit, contribute to the cost of it?"

It is not an answer, but an explanation that is wanting.* It is the community, and not especially the demandant of justice, who is benefited by the administration of justice and the establishment.

That a general sense of security may prevail, is the primary object for which the establishment is, or ought to be maintained. You suppose a wrong to have been done; the general sense of security is so far violated. If the wrong remains unredressed, the violation is enormously increased in amount. An unredressed wrong having happened, may be repeated, and all security may be lost. To prevent this, as well as to compensate the sufferer, which, though important, is in importance inferior to the other, the public and general interest is greatly concerned in seeing the wrong redressed; and if no compensation at all were provided, or ever to be made to the sufferer, it would still be a matter of public concern that the wrong-doer should be punished: and clearly when the law says to the sufferer, You shall have compensation, you shall have the payment, or the damages which may be due to you, it means to confer a benefit on the whole community, and not upon the sufferer in particular; and if the rule be true that the

* See Lord Redesdale's Considerations, p. 11.

burthen of the establishment ought to lie on those who reap the benefit, the burthen ought to fall, not on the particular suitor, but on the public.

Not only is the law made, and justice administered for the general benefit, but the public do, or ought to derive benefit from almost every law-suit. The law itself is no more than a writing upon a piece of paper. its efficacy is only shown when it is put in act—when its operation is exhibited by its application to the cases of real occurrence. Then we see it furnishing its important lessons to the whole community, encouraging the good, deterring the bad, teaching duty to all who are interested to learn; and these benefits, by no means inconsiderable, are procured for the community by the demandant of justice, who, when he asks for himself the payment or damages which the law entitles him to, and which is promised to him by the Government, does not (when you have done all you can to relieve him) obtain it without cost and inconvenience, often to a large amount, to himself.

To say that besides the loss from delay, the inconvenience and expense which in no system can be avoided, he shall also be subjected to the cost of that establishment from which the whole community derive a constant benefit, seems in the highest degree unjust and inexpedient.

If a foreign army invades your frontier,* the inhabitants who live on the frontier are those who first and most immediately suffer, and who may, perhaps, be most willing to resist the invaders; but the danger presses on

* "This is Bentham's illustration—'Law Taxes.'"

the whole country, and the inhabitants are all of them interested to put an end to the attack. If in these circumstances, the Government levies an army which repels the invader altogether, what would be thought of it, if at the end of the contest an attempt were made, not to indemnify the wretched inhabitants whose property had been the seat of war, but to impose upon them the burden of the whole expense?

But, instead of foreign army, read, the wrong-doers who are seeking to invade the rights of all persons exposed to their depredations; for, inhabitants who live on the frontier, read, the persons who for the time are actually suffering by the violation of their rights, and for the army raised by Government to repel the foreign invader, read, the establishment of Courts, Judges, and ministers of justice to redress the violations of right which are committed; and in levying upon the suitors the expense of these establishments, you have a transaction analogous to the conduct of a Government, which should levy on the inhabitants of the invaded frontier the expense of the army raised to repel the invader.

Upon reflection it is abundantly clear, that the expense of justice, so far as it consists in maintaining the necessary establishment and machinery, ought to be defrayed by the community at large, and not by the suitors.

II. But then, it is said to be useful and proper to impose expense on suitors for the purpose of checking litigation.*

Litigation, it is said, is not always *bonâ fide*, but

* See Lord Redesdale's Considerations, p. 96.

sometimes vexatious and unjust. And Lord Chief Justice Denman asked, "Is all litigation *bonâ fide?* Are you not to have the means of punishing vexatious litigation by imposing costs?" It is difficult to deal with such an argument as this. Because litigation may sometimes be vexatious, does it therefore follow that all litigation whatever should indiscriminately be subject to cost? Because litigation may sometimes be vexatious, and in such cases ought to be visited with costs in proportion to the amount of vexation, does it therefore follow that such costs ought to be raised by a general rule indiscriminately acted upon in all cases, and applied for the purpose of maintaining the judicial establishment? If there be a ground for the argument (as I think there is), ought not the amount of such costs to be proportioned to the vexation of which the litigant has been guilty, and applied towards the indemnification of the party who has been made to suffer by it?

It is, however, so usual to interpret the word litigation in a bad sense, that the subject requires some consideration before we can well understand the proposition, that the expense of justice is useful in checking litigation.

Litigation is the act of demanding a right in a Court of Justice.

When wrong is done, or believed to be done, by one man to another—if we would preserve the peace, and not have the wrong, or the belief of it, to prevail, and be productive of violence, the parties must submit their respective claims to a judge. Doing this is litigation—it is the demand which each party makes before the

constituted authority that right may be done to him and declared.

This is a proceeding which ought to be encouraged, and not checked. If a man being or thinking himself wronged cannot apply for justice (because of the check you have provided) the discontent which rankles in his mind will have a tendency to spread itself over the whole community, and more or less of imputation will rest upon the party accused. If there be no check, and on application for justice (*i.e.* on litigation) it appears that the man was wronged, then by the litigation wrong is redressed, and the persuasion of general security is increased. If, on the litigation, it should appear that the man was mistaken, that, in fact, he had not been wronged, then his groundless complaint is exposed, his discontent and complaint remain an imputation on himself alone, the public will not partake of it, and the party complained of (if not indemnified for the false complaint made against him) will yet be relieved from the imputation which was cast upon him.

Conceive two parties contending for a supposed right. Either party, whether he has the right or not, may honestly think that he has it, or may honestly think it doubtful whether he has it or not—in none of the cases arising out of the various combinations which this state of things may admit of, can it be said to be misconduct to submit the matter to the judge.

It is clear, therefore, that we ought not under the name litigation, to condemn that which may not only be irreproachable, but even the laudable exercise of a

right, without the exercise of which there would be no peace or safety in society.

But still there may be misconduct in litigation. If the judge was always at hand and in activity, and if the proceedings before him were not attended with expense, such misconduct could not be great, but increase the expense, and you may increase the misconduct to any amount.

It may be that one of the parties knowing that he has not the right, nevertheless makes an unjust claim, or unjustly resists a claim that is just. If the right could be settled without expense or delay by an imme diate application to the judge, this vexation and injustice would speedily terminate.

But add expense to the proceedings, and the consequences are obvious. The expense may be, as in existing institutions it often has been, and is, of an amount exceeding the sum in dispute many times repeated. The rich plaintiff may then proceed deliberately, and by lawful means, to extort the whole amount not merely from a poor, but from a rich and prudent defendant, who, having the right, may nevertheless reasonably say, Why should I defend it when by doing so, though I secure to myself the sum in contest, I shall in the end be so much less rich than if I had given up my right at first? And in like manner an unprincipled defendant may deliberately refuse to satisfy a lawful demand made upon him, on the speculation that the person justly entitled to the right will not sue for it, because if he were to do so he would, after having recovered his due in respect of the

contested right, be on the whole out of pocket by reason of cost of suit.

These cases are by no means hypothetical—cases are continually occurring in which litigation (by means of the expense and the delay with the increased expense attendant upon it) is employed as a most powerful instrument of fraud, extortion, and unjust resistance to right. Neither delay nor expense can be altogether avoided; and consequently under any system which can be suggested, litigation may by means of expense and delay be made vexatious and oppressive. But it is always to be most carefully kept in mind that litigation is the exercise of rights established for the peace and welfare of the community—that it is capable of being perverted into mischief, and that expense, instead of being a means of preventing that effect, is in fact the most powerful means of causing it; and that the injurious effect which it produces is in favour of the party who, knowing that he has no right, is, nevertheless, encouraged to make an unjust claim, or an unjust resistance, to the prejudice of the party who has the right, and may by the expense be deterred from defending or enforcing it. And in this way discredit is continually brought upon the law, and the best institutions of the country.

Those who being in the right are, nevertheless, induced to submit to an unjust or abandon a just claim, do not bear their misfortune in silence.

CHAPTER II.

LORD LANGDALE'S SPEECHES—ON THE BOROUGH COURTS BILL—ON THE BILL TO AUTHORISE PARLIAMENTARY PUBLICATIONS—ON THE COURTS OF CHANCERY BILL—ON THE ATTORNEYS AND SOLICITORS' BILL—ON THE CONVEYANCE AND LANDED PROPERTY BILL—ON THE TOWNSHEND PEERAGE BILL—ON THE COMMON LAW COURTS BILL—ON THE TAXING MASTERS BILL—ON THE PARLIAMENTARY PROCEEDINGS BILL—ON THE VICE-CHANCELLORS' BILL.

On the second reading of the Borough Courts Bill (26th Feb. 1839), Lord Langdale, in addressing the House, said:—

"I do not mean to trouble your Lordships by discussing or expressing any opinion on the general question of Local Courts, but confining myself to that part of the subject with which I am most familiar, I hope I may be excused for expressing my opinion, that for facilitating proceedings and inquiries in the Court of Chancery, there is great need of local authorities, both ministerial and judicial. The jurisdiction of the Court extends over the whole country, and many things are to be done personally by persons required to obey the orders of the Court. When a defendant has appeared, he has to put in his answer. In London there are proper authorities to receive the answer with the sanctions required; but all defendants cannot come to London, and in the country there are no permanently constituted authorities by

whom the answer can be taken; and to supply the defect, it is necessary to create a competent authority on each occasion by commission; and when the answer is taken by such authority, there are no regular means provided for its conveyance to London: the party is to find a messenger who will carry it to London, and swear that he received it from one of the Commissioners, and has since kept it in his own possession; and, notwithstanding the difficulties which sometimes occur in getting this done, the party is held to be in contempt if he does not perform it in a limited time. Again, when witnesses are to be examined, there are proper officers established to perform that duty in London, but none such in the country; and this defect has to be supplied by creating an authority for each occasion; or, in other words, by issuing a commission. And the Commissioners, who are not always the most competent persons, have too often the means of making the execution of the commission subservient to their own convenience or pleasure. Great unnecessary expense is occasioned to the suitor; and when the depositions are taken, a messenger is to found to convey them to London. Besides these, there are many other ministerial duties connected with the proceedings in Chancery which must be performed in the country, where there are no permanent or regular authorities provided to perform them; and I cannot help thinking that the suitors and the public have great reason to complain that a remedy is not found for defects which can hardly be considered otherwise than as grievances.

What reason can be given why officers should not be

provided to enable suitors living at Carlisle or Liverpool, or in Cornwall, to swear their answers and examine their witnesses in their own neighbourhood, and have their answers and depositions officially conveyed to London? I have never heard a reasonable objection to such ministerial duties as I have referred to, being intrusted to permanent local authorities. Various ministerial duties are entrusted to local authorities created for each occasion; and there seems to be no reason why they should not be intrusted to local authorities created for all such occasions, and steadily subject to the authority of the Court in London. But I go further, and think that other duties, having more of a judicial character, might well be intrusted to such local authorities. When long accounts are to be taken between parties resident at Liverpool, and all books and documents which relate to the subject, and are often very numerous and bulky, are at Liverpool, and all the witnesses who know anything of the matter are also there, why are everybody and everything necessary for taking and verifying the accounts to be brought to London? My Lords, I am persuaded that such regulations might be framed, and such a system of control established, as would make it perfectly safe and satisfactory to the suitors, and a great saving of expense, to have many operations of this kind, and many important inquiries, conducted in the country; but for this purpose you must have competent authorities; and I rejoice at the discussion which has taken place to-night, in the hope it may lead to such authorities being provided."

On the 10th of April, 1840, on the second reading of

the Bill to authorise the publication of Parliamentary Papers, Lord Langdale observed that the object of the Bill was to put an end to those proceedings which, by lessening public confidence in the Courts of Justice, had so justly created alarm throughout the country. No one could regret more than he did, the proceedings which had taken place, and he must take the liberty of saying, that some of the doctrines which had been propounded and maintained during the controversy, by persons entitled to great consideration, appeared to him to be extremely dangerous, and to be inconsistent with the principles and practice of a free and lawful constitution of government.

On the question of printing and publishing parliamentary papers, he said, that the propriety of so doing had been placed on various grounds, such as public instruction, the duty of explaining to the country the facts and reasons on which legislation proceeded, and so on; but in his opinion it rested on the duty of obtaining the fullest possible information for the purpose of legislation. All the information which belongs to any subject can only be had by publishing the imperfect information which is already possessed; by such publication, those who know more and better, are induced to correct errors, and supply deficiencies, and the knowledge upon which legislation ought to proceed has thus a chance at least of being increased to the utmost, and publication being necessary, and the subjects being such as sometimes may seriously affect the character of individuals, it becomes a very important duty to avoid the insertion of injurious and improper matter in the papers. Nobody suspected either House

of Parliament of desiring to avail themselves of their great powers to circulate libels and disseminate calumnies. Neither was it a question whether either House might print, publish, and sell, for anybody may print, publish, and sell; but the question is, what is to be done when something injurious to individuals happens to be contained in a paper printed and published by either House; for, notwithstanding the utmost precaution that could be used, it would occasionally happen that falsehoods, injurious to individuals, would escape attention and be published, and considering this to be an accident which occurs in a proceeding necessary for the public service, he owned it appeared to him that the servant who had published the paper in the discharge of his duty, and pursuant to the order of the House, ought not to be in any way answerable for the injury done; but he could not think that the injury ought to go without redress, or that it would be inconsistent with the dignity of either House of Parliament to permit it to be tried in a legal way, whether any statement made in a printed paper was false and injurious, and if it proved to be so, to make compensation for the damage done.

On the 11th of May, 1840, Lord Langdale spoke again on the Courts of Chancery Bill; he said there were some parts of the Bill on which it might appear right that he should make some observations. It was no longer a question, whether additional assistance was or was not required in the Court of Chancery. Every one agreed that it was; but the mode of giving it required consideration.

It was right he should state his reasons why he sup-

ported one part which might be supposed to have some relation to him individually, or to the office he filled. He had formerly stated to their Lordships his views as to what ought to be done in the Court of Chancery, and which required much more than was now proposed. His opinions on the subject had undergone no alteration, and he was prepared to support them by reasons which he thought sufficient. Amongst other things, he thought, that under proper arrangements, and by the addition of appropriate strength, the House ought to be enabled to dispose of all the appellate judicial business of the country; and that the appellate business of the Privy Council ought then to be transferred to this House. That had been and still was his opinion, and he should be very glad to see it acted upon—but he was obliged to admit, that neither the House nor the country was yet prepared for a change so considerable; and, therefore, he was compelled to consider it as settled, for the present at least, that there must be a separate appellate jurisdiction in the Privy Council; and this being so, the question was, how the inconveniences arising from the present arrangements could best be remedied. Now, the judicial business of the Privy Council was said to occupy about forty or fifty days in the year. To have that business performed, it was necessary to have judges whose duty it should be to perform it—not judges who might go or not at their pleasure, but judges whose duty it should be to go when required, and that with such regularity, that the business might be steadily conducted. To attain these ends, it was necessary either to appoint judges who should have nothing else

to do, or to borrow judges who had duties in other courts. To appoint judges who had nothing else to do, would be to give rise to all the inconveniences which had occurred on another occasion from the appointment of judges who had not sufficient occupation, and would be, for many reasons, so objectionable, that in this place, at least, the project was scarcely worth consideration. To borrow judges from other courts, which was the alternative, must undoubtedly be a considerable inconvenience. It was the abstraction of so much time, say a fourth, or nearly a fourth part of all the time, which ought to be devoted to the peculiar business of the courts from which the judges were taken. This was, no doubt, a very great inconvenience; but it was unavoidable so long as it was determined to preserve the jurisdiction of the Privy Council as a separate jurisdiction; and the question then became, from what court the principal judge could be most conveniently borrowed? The regularity of proceeding required that there should be a permanent head, and he would state his reasons:—

First, a regular head was required for the judicial committee of the Privy Council. Secondly, the Master of the Rolls had for a long time usually presided in the transaction of such business. No doubt, as had been said, when he did so, his time was much less occupied in the business of his own court than it was now. Except for a few days after each term, he sat in the evening only, and for only twelve hours a week in term time, and sixteen hours a week out of term—while now he sat regularly in the morning, and for thirty hours a week, and sometimes more, both in term time and out

of term. Still, however, as this duty had formerly devolved on the Master of the Rolls, there was a better prospect of acquiescence than if an officer who had never had this duty imposed upon him had been selected; and if, as this measure proposes, sufficient additional strength be given to the Court of Chancery, the inconvenience to the suitors of that court would be prevented. Thirdly, it was impossible that the judicial business of the Privy Council could be well conducted without the attendance of a regular bar—and it had appeared to him that there was no mode of proceeding so likely to procure the attendance of a regular bar as that of making it the duty of the Master of the Rolls to be there.

The bar who usually attended upon him in his own court were men of distinguished ability and reputation, and being released from the Rolls Court on the days on which the Master of the Rolls would be attending on the Privy Council, they would, in all probability, be resorted to by the suitors in the Privy Council. And, whilst his noble and learned friend considered that the regularity with which the business of the Rolls Court was conducted afforded a reason for not disturbing it, he saw no reason why, with the assistance of the same bar, the same regularity should not be continued at the Rolls, and, at the same time, be extended to the Privy Council; and he confessed he saw no other way in which the same regularity could be obtained. He believed, that if the Master of the Rolls attended at the Privy Council, the assistance of an able, intelligent, and experienced bar would be obtained at the Privy Council, and he considered this a matter of the highest

importance. Such, then, were his reasons for assenting to this measure.

The measure, if carried into effect, would impose upon him great additional trouble and responsibility; and he could very sincerely say, that if he consulted his own feelings, he would much rather remain as he was. His only wish was faithfully to discharge his accustomed duties; and if he might be permitted to allude to such a subject, he would add, that long habit had attached even his affections to the discharge of his duties in the place and office in which he now was. The proposed change did not suit him personally; but he agreed to it, because he thought that under the circumstances, the public service required it.

The speech he delivered on moving the second reading of the Bill for amending the laws relative to Attorneys and Solicitors, was peculiarly distinguished for its lucidness and his kindly feeling towards Solicitors, whom he characterised as a body entitled to the highest commendation for their skill and integrity. On one point, that of the examination of articled clerks, prior to their admission on the Roll of Attorneys, he spoke with considerable approbation: the orders establishing the examination in his court were made soon after his appointment to the Mastership of the Rolls, and he always took great interest in the conduct of the examination and its successful progress.

The Bill, he said, was intended to consolidate nearly sixty Acts, and would be a measure of unquestionable advantage both to the public and the profession—it proposed to continue and keep up an effective system of

examination before persons should be admitted to practise as solicitors or attorneys. The Bill also provided that the roll of solicitors and attorneys should continue in separate courts just as at present; but provision would be made for forming a general roll, for the purpose of ascertaining what solicitors and attorneys practised in the various courts at one view. With respect to the certificate, its possession at present merely notified that the stamp duty had been paid; and it was sometimes found that those who obtained a certificate procured the insertion of their names in the law lists, although they were not to be found in the rolls of any of the courts. This did not often happen, but when it did it was found to be very inconvenient; and as a means of preventing it, it was proposed to unite the proof of enrolment with the certificate of the stamp duty being paid. With reference to the taxation of costs, he proposed that all bills of costs should in future be taxed in the courts in which they had been incurred. Another clause of the Bill referred to gentlemen holding certain situations in public offices, who are thereby exempted from the usual examinations undergone by solicitors and attorneys. He did not propose any clause affecting the situation of gentlemen at present holding those offices; but the Bill proposed that as these situations became vacant they should be filled up by persons chosen from the rolls of solicitors and attorneys. There was one clause in the Bill, giving to attorneys and solicitors the power of administering oaths. Since that clause had been framed, however, he understood that it would considerably affect the emoluments of various classes of functionaries; and, under

these circumstances, he proposed to withdraw the clause in committee.

On the 28th April, 1843, Lord Langdale said, on the second reading of the Conveyance and Landed Property Bill, that there were two principal causes for the present prolixity of deeds of conveyance: the first was, that the remuneration which the solicitor received was proportioned to the length of the deed; and the next was, the state of the law with regard to the construction of words used in deeds. It must be obvious that professional remuneration being made to depend on the length of the document, must be an inducement to prolixity; while, with regard to the legal construction of words, the necessity was created of using a number of provisos, and other clauses, for the purpose of qualifying the terms adopted. He confessed he did not find anything in the provisions of the Bill which met the first case—that of giving suitable remuneration to solicitors; nor was there much assistance given in respect to the construction of words. All that this Bill proposed was, that when the value of the property was small, the conveyance should be short; but there was nothing in any other respect to enforce upon professional men short forms of conveyancing. He had considered this Bill with a great desire to promote the object of it, but he did not believe that it would persuade any one to make deeds shorter.

On Lord Brougham calling on the Master of the Rolls (16th of May, 1843) to give his opinion on the Townshend Peerage, Lord Langdale said, "Thus called upon, I can have no objection to state shortly the reasons which induce me to vote for the second reading of this

Bill. Not having been able to attend the House when the evidence was given at the bar, I have very carefully read the whole of it as printed for the use of your Lordships, and I am of opinion that the case stated in the preamble of the Bill is substantially proved. This being so, every one must consider it to be desirable, at least, that a public scandal proved to exist, and producing, and likely to produce, great private injury, should be put an end to by legal means. It is a case in which justice cannot be done and secured without the application of law, and there is no general law applicable to it. Now, I admit, first, that it is a great reproach to our system of general law that it provides no remedy for such a case as this; and, secondly, that a special and peculiar law made for an individual case is justly open to such objections as have been so calmly and judicially stated by my noble and learned friend (Lord Cottenham). But in all cases of this kind we have to consider the balance of conveniences and inconveniences. There is no general law enabling parties to obtain redress by complete divorce; and Acts of Parliament for effectuating divorces in particular cases are passed in every Session. They are not free from objections to which special laws made for individual cases are liable; but it is thought better to pass them than to refuse justice in particular cases where it cannot be had by the general law; and on the consideration of this case, there being unfortunately no general law applicable to it, I think that the passing of this Bill, though objectionable, will produce much less inconvenience than will arise from permitting the public scandal and private wrong

which have been proved, to go on unchecked and unredressed, I only wish to add, that in my opinion a general law applicable to such subjects ought to be provided; and that I support this Bill for the reasons which I have stated, and because I think that a general law, duly considered, cannot probably be prepared and agreed upon in the time within which relief ought to be given in this case."

The speech he delivered on the 22nd May, 1843, was one which might have been expected from him, on account of his strong sense of rectitude, and his objection to the exaction of fees from the suitors of the Court. The speech he made on the 30th June, 1837, on the second reading of the Common Law Courts Bill, has already been referred to, and the able paper he wrote on the occasion in answer to the unphilosophical objections of Lord Cottenham and Lord Denman, has been given. Lord Langdale ever stood foremost amidst the legislators who condemned the various forms in which taxes have been levied on the administration of justice; and he maintained that suitors ought not to be compelled, by the payment of fees, to contribute to the salaries of the officers of the Court; it was quite sufficient for them to pay their legal advisers, their counsel, and their solicitors, and the expense of their witnesses.

On this occasion he said, "Before the House is put into committee on this Bill, I take the liberty of observing that it involves a principle to which I have on a former occasion stated my objections. The Government has no more important duty, nor has the country any more important interest, than to provide the means of

administering justice, and it has long appeared to me, that, in order to the due discharge of that duty, the Government ought to pay not only the salaries of the Judges, but also the salaries of all the ministers of justice and all official expenses; or, in other words, that no fees for the support of the judicial establishment and of the law officers ought to be levied on the suitors in particular causes. It was on this account that when the Act 7 Will. IV. & 1 Vict. c. 30, was under the consideration of your Lordships, I objected to the enactment which provided that certain salaries, compensations, and expenses were to be paid by means of fees, and that the surplus fees were to be paid into the Exchequer. I confess that the opinion which I then stated, met with no favour from your Lordships, and that it was emphatically opposed by two of my noble and learned friends who are not now present. Amongst other things it was stated that I was under a great mistake in supposing that any revenue was to be raised from the fees received in the Courts of Justice. The Act passed, and the Bill now before your Lordships provides in a similar manner that fees shall be received, that thereout certain salaries and expenses shall be paid, and that the surplus shall be paid into the Exchequer. It has, therefore, seemed to me proper, on this occasion, to consider the operation and effect of the former Act, on the model of which the present Bill is in this particular framed. And from an account which in the course of the last year was laid upon your Lordships' table, and printed, if I have correctly collected the results, it appears that in the four years ending on the

1st of January, 1842, the receipts in the three Courts of Common Law under the Act 1 Vict. c. 30, amounted in the whole, to the sum of 279,427*l.*; that there were surpluses after paying the salaries, compensations, and expenses which were payable under the Act; and that in the same four years such surpluses amounted in the whole to the sum of 120,714*l.*, which was accordingly paid into the Exchequer. Thinking myself, that the whole official expense of administering justice ought to be paid by the country, it appears to me that the whole sum of 279,427*l.* was in these four years raised by fees, for the payment of charges which ought to have been paid out of the public revenue; those who do not entirely agree with me will probably not deny that to the extent of the 120,714*l.* paid into the Exchequer, the public revenue has profited at the expense of the suitors of the three superior Courts of Common Law in the four years to which I have referred. But it is necessary to make a further observation, because in addition to the compensations which the Act makes payable out of the fees, there are other compensations to a considerable amount which are yearly paid out of the Consolidated Fund to persons who were deprived of their offices under the Act; and I am aware that there are, unfortunately, many persons who think that fees may be properly levied on the suitors for the purpose of paying such compensations; and that notwithstanding the charge upon the Consolidated Fund, it may be just to set off these Treasury compensations against the surplus fees paid into the Exchequer. This appears to me to be wholly unwarranted; but it may be important

to ascertain whether the surplus fees do or do not exceed those compensations.

The account to which I have referred, contains a statement of the compensations paid out of the consolidated fund for one year only, the year 1841. They amount in the whole to 57,553*l.*—and, if I have computed correctly, part of them amounting to 26,670*l.* was payable under other acts of Parliament, and the remainder, consisting of the compensations payable under the act 7 Will. IV. & 1 Vict. c. 30, amounted to 30,883*l.*; and deducting this sum from the sum of 38,068*l.*, which was the amount of surplus fees paid into the Exchequer, in the same year, 1841, from the three courts, it appears that the public revenue in that year profited, even after payment of these Treasury compensations, to the amount of 7,184*l.* The surpluses paid into the Exchequer, from the two Courts of Queen's Bench and Common Pleas, appear, indeed, to have been insufficient to satisfy the Treasury compensations, payable to the persons who held offices in those courts, but the surplus paid into the Queen's Exchequer by the Court of Exchequer was so much larger than the Treasury compensations which were paid to the persons who held offices in that court, as to leave, on the whole, a balance of 7,184*l.* of profit to the revenue. I have, therefore, no hesitation in saying, that under the act of 7 Will. IV. & 1 Vict. c. 30, the fees levied in the courts of common law have become a source of public revenue; and I cannot help thinking it incumbent upon those who declared that this was not intended, to take such steps as are in their power to correct the admitted

grievance. The questions relating to the expense of administering justice, and the proper mode of defraying it, are too large and important to be discussed incidentally upon an occasion like the present; but they appear to me to deserve the most serious attention of your Lordships and of Government. I do not mean to offer any opposition to this bill, I think that it is likely to be useful: it is in one respect better than the former bill, as it enables the judges to establish, and afterwards to modify and vary the fees which are to be raised—but as it involves the same objectionable principle, I thought it my duty to restate my opinion, strengthened as it is by subsequent reflection and experience.

My Lords, before I sit down, I request your Lordships to permit me to say a few words which have reference to the Court of Chancery. Holding the opinions which I have this day expressed, it may reasonably be asked, how it is that I have not only acquiesced in, but approved of the measures which have been recently adopted in that court? The answer is short. The reforms to be made were very important, and they could not be effected without providing a revenue, not only to pay the office expenses, and the salaries of the officers by whom the work was to be done, but also to pay compensations to officers who lost their offices. I was given to understand that Government would contribute nothing for these purposes; and the necessary consequence was, either that the suitors must be taxed for the purpose of raising the sum required, or else that the reforms must be altogether abandoned, And, after painful consideration of the subject, I came to the con-

clusion, and am now of opinion, that, on the whole, it was better to make the reform and continue the charge on the suitors for the limited time during which the compensations may be payable, than to perpetuate the charge, together with all the inconveniences and evils which it had become so desirable to remedy. And some fees being abolished by the reform which was made, I agreed in the necessity of substituting a new, but temporary burthen, in lieu of the old one, which but for the reform would have been perpetual. As the compensations fall in, the charges will be diminished; and at length the salaries and official expenses will alone have to be provided, and by the reform, those salaries and expenses are between fifty and sixty per cent less than they were under the old system. I have said that the Government refused to contribute to the expense. I say it with regret, but without the least thought of accusation or blame. The revenue was embarrassed, the subject has been but little discussed, it is not now well understood, and there are many persons who still think that it is good to make litigation more expensive than it need be. I must add that I think no other Administration would, at this time, have done otherwise than refuse to contribute to their necessary expenses. Saying this, I must at the same time declare that in my opinion, the refusal of the Government to contribute to the expense of reforming the Court of Chancery is the only defence or excuse which is open to me and those with whom I have had the honour to act, for continuing the burthensome fees which now oppress the suitors of that court. There is this consolation, that complete and

effectual relief can at any time be afforded by a simple vote of Parliament for money. The complication and perplexities which rendered the reform of the Six Clerks' office so difficult, are removed."

On the 4th of August, 1845, on the Bill for the Taxing Masters of the Court of Chancery in Ireland, Lord Langdale said, he believed that this appointment ought to be given to solicitors, who had peculiar qualifications, in addition to others which they had in common with barristers; and he had no doubt but that there could be found among that class a sufficient number of men of ample integrity, influence, and respectability, and having the advantage of long acquaintance and familiarity with the subject, to undertake the duties of the office.

The speech Lord Langdale made on the Parliamentary Proceedings Bill (6th of March, 1846), contains admirable remarks and severe strictures on the mode in which bills are sent from one House to the other so late in the session that they cannot be sufficiently discussed for want of time.

He said that the best, if not the only, means of guarding against hasty, rash, and indiscreet legislation is to bestow adequate care on the preparation of bills before they are introduced into either House. A business so important ought not to be left to the diligence and caution of individual members of parliament, or even to the responsibility of particular government offices, or ministers charged with other duties sufficient to occupy their whole time. No business is so difficult, or requires so much care, attention, and caution as the business of

making new laws, and no new law should be proposed without the official report of a responsible minister, stating accurately and authoritatively what is the present state of the law with reference to the subject—what are the inconveniences which are found to arise from it—upon what principles it is proposed to provide a remedy—and how those principles are intended to be applied. If this were carefully done, we might reasonably hope to have less of rash and inconsiderate suggestions from ignorant and incompetent persons, less difficulty in dealing with such suggestions when made—less time wasted in idle and unnecessary discussions—more of useful deliberation and less hurry—a greater facility of preserving uniformity of enactment and expression—in short, better laws. Further, if proper means were taken to ascertain and correct the errors which must be found in almost every application of new laws, we might hope that the whole system of our laws would be gradually, effectually, and safely improved. To do what ought to be done towards attaining this great and important object would require the constant and unremitting attention of Government. By the exclusive employment of a minister charged with the particular duty of attending to the affairs of legislation and justice, you might probably reduce to a small amount not only the inconveniences which this bill is intended to diminish, but many other inconveniences of still greater importance.

On the Protection of Life Bill for Ireland, which was read a second time on the 6th of March, 1846, he also addressed the House at some length; in this speech he

expressed very enlightened and humane sentiments on the subject of Ireland.

In the Bill to facilitate the Sale of Incumbered Estates in Ireland, the second reading of which was brought forward on the 31st of July, 1850, he said, "I cannot say that I am friendly to the interference of the Legislature with the property of individuals against their consent and will, and in the absence of contract.

No one has been more jealous than I have been of the powers conferred for the purpose of enforcing such interference."

The Masters' Jurisdiction in Equity Bill, which Lord Brougham brought forward on the 25th of March, 1850, afforded Lord Langdale an opportunity of making a long and elaborate address to the House on the subject. He said, he did not concur in the whole of the present Bill; indeed there were several things in it of which he did not approve; but if the principle and object of the Bill be to diminish the expense and delay of suits in Chancery to the utmost extent which was practicable consistently with justice and the caution absolutely necessary for the due administration of justice, he had no hesitation in saying, that the Bill deserved the most serious consideration of their Lordships, and was entitled to his humble and very cordial support. No object could be more desirable.

On the Fees of Court Bill, 28th of May, 1850, Lord Langdale expressed himself in favour of the abolition of all fees in Courts of Justice. Justice, he said, ought to be administered without any expense to the suitors;

and all persons engaged in its administration ought to be paid by salaries and not by fees.

His speech on proposing the second reading of the bill for the Registration of Deeds and Assurances in Ireland, in July, 1850, was wholly explanatory of the object and scope of the bill.

He observed on this occasion, that in Ireland an office for the Registration of Deeds has been established for nearly a century and a half, and although it is imperfect in some particulars which require amendment, the utility and value of the system of registration of deeds and assurances is not doubted.

On the 24th February, 1851, Lord Langdale moved the second reading of the Vice-Chancellors' Bill. Speaking of the causes which led to the great arrear of business which then existed he said, "One cause undoubtedly is to be found in the interruption to business which was occasioned by the illness of the Lord Chancellor and of two of the Vice-Chancellors during so long a period of the last year; and in the absence of any usual and regular means possessed by the Court of Chancery of providing judicial assistance during such occasional interruptions; but a still greater cause of the existing arrears is to be found in the nature, weight, and complication of the new business which has lately been thrown upon the Court, partly by the Acts of Parliament, which are called 'winding-up Acts,' and partly by the great litigation which has arisen from the transaction of Railway and other Joint Stock Companies, and the great uncertainty of the law applicable to such Companies and their transactions. The Legislature has constituted or sanctioned

the Companies, and has connected the transaction of many of them with the performance of important public duties, but has not, or, if ever, has rarely pointed out the extent to which, or the manner in which the jurisdiction of the Courts of Law and Equity is to be applied to the cases which arise.

The Court of Chancery having jurisdiction to apply the law relating to partnerships constituted for purposes unconnected with the discharge of public duties, and consisting of a limited number of partners, is continually applied to for its interposition and assistance in cases supposed to be similar with reference to the transactions of partnerships consisting of an indefinite number of persons, and frequently constituted for public purposes, or connected with duties of public obligation; and the difficulties which arise are such that in very many cases the judge before whom they first come can neither know what the Legislature intended to leave to his decision or judgment, or what may even be the probable view which may be taken of the subject by any other judge before whom the same or like cases may be brought. In such cases it can scarcely be said with truth that there is any law at all, any rule of right or wrong; and until the numerous perplexing questions which are constantly arising shall be settled by authority, or some legislative remedy shall be provided, I am afraid that cases of this kind will occasion arrears which cannot be remedied by the appointment of a new Vice-Chancellor."

CHAPTER III.

LORD LANGDALE'S LAST SPEECH IN THE HOUSE OF LORDS.—ON THE COUNTY COURTS BILL. — HIS POWER AS A PUBLIC SPEAKER. — HIS PERSONAL APPEARANCE.

His speech on the County Courts Bill (7th March, 1851), was the last that Lord Langdale delivered in the House of Lords. For that reason it is given entire, but not as a fair specimen of his style in the Senate House. It shows, however, that to the very last—a few weeks before his death—he was, as he began, an enemy to the delays and costs of law proceedings, which he regarded in the strong light of a denial of justice.

"My Lords,

"In the few observations which I desire to address to your Lordships, I intend to avoid the consideration of the details of the measures proposed by my noble and learned friend.

It is with the greatest satisfaction that I have heard of the great benefit which has been derived from the establishment of the local courts; and, persuaded as I am, that their jurisdiction may be greatly and most advantageously extended, I am anxious to express, shortly, my opinion on the subject.

In the first place, I am of opinion that so much of

the jurisdiction in Bankruptcy and Insolvency as is in part judicial and in part administrative, may be most usefully exercised in the County Courts, and I hope that my noble and learned friend's Bill in relation to that subject will be more fully and favourably considered.

In the next place, I beg leave to say that it has for very many years appeared to me that the jurisdiction, partly judicial and partly administrative, of the Court of Chancery, might also with great advantage be exercised by the local courts, under the direction and control of the Court of Chancery. I cannot expect that my noble and learned friend should bear in mind the suggestions which were made to him more than twenty years ago on this subject. His Bill of 1832, I believe, contained the first distinct proposition for the establishment of what may perhaps, without impropriety, be called local Masters.

The Court of Chancery, in the exercise of its large jurisdictions, has occasion for the performance of two nearly distinct classes of duties, both of which might be most usefully performed by the County Courts. One class is almost, though not entirely, of a ministerial nature, and is usually performed by means of commissions in one shape or other. Another class consists of duties which are much more of a judicial nature, and is applicable to matters of administration and account. Matter of this kind might be, and, in my opinion, ought to be, at first directed, and on all subsequent occasions superintended, and if necessary controlled and corrected, by the court itself.

The relief to the suitors would be very great indeed.

Accounts might be taken in the country, witnesses with vouchers, papers, and documents, in most cases need not be brought to town—time would be saved, and the parties themselves might attend to their own business. I confess, my Lords, that having often considered the means of relieving the suitors of the Court of Chancery from expense and delays in the Masters' Office, the plan of attributing a considerable portion of the business to the Judges of the Local Courts has appeared to me more likely to be effectual than any other which has occurred to me.

My Lords, I believe that this great and important improvement might have been effected by the addition of scarcely more than three or four words to the Local Court Act of 1846, but the words 'Masters in Ordinary" were omitted from the 22nd clause in the Bill, and the benefit, which might have been obtained from the remainder of the clause, has been disregarded.

I wish to give every support in my power to this part of my noble and learned friend's measure.

With respect to arbitration, I will only observe, that there may be many cases in which the parties reasonably desire to constitute a Judge of their own; in one sense an arbitrary Judge, with absolutely final authority; and that in cases in which it is thought desirable by both parties to establish such a Judge, some great advantages may be, probably, obtained by having the arbitrator a known Judge, appointed by authority, free from all bias, all interest in fees, and all interest in delays. I shall be glad to consider the provisions of the

Bill which my noble and learned friend has laid on the table.

I own that the subject of which I have most doubt is that which relates to the proposed Courts of Reconcilement. It may be that my noble and learned friend has correctly accounted for the apparent want of success which has attended such measures. He seems to have lately received some important information, but, undoubtedly, a notion has prevailed that Courts of Reconcilement have succeeded in other countries only to a very small extent: the subject is, of course, to be further considered.

But, my Lords, I am principally desirous to address to your Lordships a few observations, which, although they may not be of any practical importance at the present moment, will become of great importance if the jurisdiction of the local Courts should be considerably extended.

I consider that the local Courts, if sufficient, will prove to be a most powerful instrument for the improved administration of the law, but that they cannot work well unless certain important provisions be made for their government. Amongst the things which appear to me to be necessary for the due administration of justice by a system of local judicature are, 1, ample judicial power; 2, the greatest practical reduction of the expense of justice; and 3, the greatest practicable simplification of the law.

Unless there be ample judicial power for the transaction of the increased business which will be thrown upon them, there will be delays and confusion. Without a

sufficient number of Judges arrears will accumulate, or what would be still worse than arrears, hasty and unsatisfactory decisions, erroneous orders, and even right orders appearing erroneous, because so hastily pronounced. You must, therefore, have no scanty provision of Judges.

My noble and learned friend has bestowed a well-merited panegyric on the admirable little work of Mr. Bentham on Law Taxes, and I should be glad to believe that the time was come for the full and practical application of the maxims of that learned and ingenious man. It seems admitted that all practicable measures ought to be taken to prevent justice from being unnecessarily expensive in these, as well as in all other Courts, and it is very necessary to observe that there are two classes of expense which are to be carefully distinguished when we speak of the expense of justice. These are the expenses of judicial establishments and Courts of Justice—the salaries of the Judges and officers—and the expense of maintaining buildings, and all other expenses connected with them.

My Lords, I hope to have, at some future time, an opportunity of showing that no part of such expenses as these ought to be charged upon any suitors, and that justice, so far as relates to this class of expense, ought to be provided by the public—absolutely without expense to the suitor—just as much as any other part of the Executive Government, and just as much as the army, or navy, or the police. The whole of this part of the expense of justice ought, as I conceive, to be defrayed by the State; and the suitor, whether in the

local courts, or any other, ought to be wholly relieved from it. The other class of expense arises from the obtaining advice and employing agents, and this is the subject of different considerations. From this expense a man can be wholly relieved only in cases where he has the time, knowledge, and the ability, to be able to transact his own law business. There must always be many cases where he cannot be; and if a man must employ another to act for him, he ought to be able to find an upright, industrious, and skilful man; if such a man cannot be found, and that easily, you have but small chance of securing the due administration of justice, and in order that there may be such men always at hand, they must be educated in habits of respectability and well instructed, and be able to obtain adequate remuneration by the practice of their profession. I am induced to make this observation as I think I have noticed a tendency rather to reduce those expenses of advice and agency, which cannot safely be reduced beyond certain limits, rather than those expenses of Court fees, or law taxes, which ought, I think, to be wholly abolished. Court fees are, in fact, by the Acts now in force maintained to a considerable amount, whilst by the sixth clause of the last Act, professional fees are fixed at so low a scale that I do not think a sufficient remuneration can be obtained; I think that this system is very likely to be injurious to the honest and poor suitors who may not themselves be able to pay for good advice, and if their attorney by exertion, skill, and industry, succeed for his client, the adverse party who is in default, and who fails after causing the whole

litigation, is not liable to pay more than the small sum provided by the Act, though he may have wantonly occasioned far greater costs and expenses than were really necessary.

As to the simplification of the law, I request your Lordships to observe that the more the jurisdiction of the local courts is extended, the greater is the obligation upon the Legislature to use all practicable means to simplify the law. There are too many cases in which you cannot by any means prevent very complicated statements of facts, and very nice, difficult, and doubtful questions of law from arising. No rational person, I suppose, imagines that the law is in as clear and simple a state as it might be made by skill and industry; what I wish to suggest is, that all which can be done ought to be done for the simplification of the law, and for the promotion of its expression in writing, to encourage and facilitate codification.

It is, perhaps, not too much to say, that the greatly increased extension of the local courts mainly depends upon the progress which may be made in the simplification of the law, and its clear and unambiguous expression in writing. When all has been done that can be done, a vast amount of complication and difficulty will remain to exercise the learning and talent of the ablest professional men.

To trouble your Lordships no further on this occasion, I take the liberty of stating, that in my humble judgment, all that is desirable to be done with reference to the improvement, not only of the local Courts, and of all the other Courts, but of the law itself, cannot be

done without the appointment, under some appropriate name, of a Minister of Justice, whose duty, while in office, would be to attend principally, if not exclusively, to this most important of all subjects."

In the House of Peers Lord Langdale could hardly be said to shine. He was no debater, nor what is commonly called an eloquent speaker. There was no passion in his declamation, no animation in his gestures, and little emphasis in his tones, and yet there was no monotony. His manner was collected and dignified, but occasionally his eye ranged rapidly about him as though he would read in the faces of his listeners the effect he was producing. His arguments were calm, clear, and deliberate, and seemed to have been written and studied, rather than an effusion warm from his brain. He was always temperate and chaste in his expressions; ridicule and sarcasm were never employed by him, as he thought both beneath the dignity of a judge. He used neither ornament, nor picturesque illustration to assist his statement. He held his imagination under the severest control, and trusted to the simplicity and lucid arrangement of his facts to produce the effect he desired; nor did he ever allow party feeling or politics to influence his choice of words, but when he spoke of the delay in the administration of the law, and the cost of obtaining justice,— subjects in which his whole soul seemed wrapped,—then his cheek flushed and he kindled into an earnestness of expression unusual for him to exhibit in the Upper House of Parliament.

On rising to address the House there was always a

little nervousness at the commencement of his speech which soon wore off, and his manner resumed its natural dignity. His countenance was highly intellectual, and his appearance challenged the admiration which acquaintance with him was sure to confirm.

As a young man he must have been eminently handsome, nor was he otherwise when his years had multiplied, for his person was calculated to resist the approach of age, and the dignity of his presence was unimpaired when the lightness and freshness of youth had departed.

CHAPTER IV.

LORD LANGDALE ON THE BENCH.—HIS UNREMITTING ATTENTION TO HIS DUTIES.—NO PRIVATE MATTERS SUFFERED TO INTERFERE.—HIS REMARKS ON "THE DIGNITY OF THE COURT." — DISAPPROVES OF VACATIONS. — HIS ANXIETY TO RENDER ASSISTANCE TO THE CHANCELLOR.

It will, I am afraid, be considered by many as an act of extreme presumption in an unprofessional man attempting to offer an opinion of Lord Langdale in his capacity of a Judge. However great the temerity may be, it is exceeded by the diffidence I feel in my power to do justice to the subject; but, having undertaken to write his life, I am persuaded that I ought to make some attempt, for my sketch, such even as it is, would be incomplete without it. I have, therefore, taken the best means in my power to form a correct estimate of his judgments, by studying them over singly, and afterwards collectively.

If from this slender qualification, in connexion with the fact that the appeals against his judgments during the fifteen years that he presided at the Rolls were comparatively few and very rarely successful, I am permitted to form an opinion, I should be entitled to say that he stood in the highest rank of Equity Judges.

It will be seen from his letters, when he was destined

for another profession, that the great characteristic of his mind was his search after truth, and a desire to know the why and the wherefore of every proposition. His mind had become so thoroughly imbued with Baconian Philosophy that he took nothing for granted that was susceptible of proof—he reduced the most complicated argument to a simple proposition. Where mathematical certainty was to be obtained, he was never satisfied without it; and where it was not, he was content with nothing less than the best probable evidence. These qualities, combined with the most scrupulous uprightness and untiring patience, and an uncommon degree of common sense, could not fail to make him an excellent Judge. He considered no labour too great in making himself acquainted with the facts, and in considering the effect of the authorities bearing on the case: for he remembered the old adage, and often repeated it:—"They who are quick in searching seldom search to the quick."

Had he been more ambitious, he might have enlarged the science of jurisprudence, by deciding more according to the spirit than the letter of the law. But he held that it was not the office of a Judge to make or alter the law, but to define and administer it. There were cases where he might covertly, as it were, have made or modified a law by his decision; but that was against his idea of rectitude. "If the law be wrong or unsuited to the present society," he used to say, "repeal or amend it; but while it is the law I am bound to administer it as I find it." His adhering strictly to this rule caused a few of his judgments to be reversed; but,

had all Equity Judges observed a similar rule, there would have been less uncertainty and contradiction in several essential points of practice. This is the only doubt in his administration of the law that I have ever heard suggested; and it is certainly counterbalanced by his impartiality, scrupulous care, sound reasoning, and mathematical accuracy.

While on the subject I am tempted to repeat the admirable and just criticism of Lord Langdale's judicial career, which appeared in the "Times" newspaper the day after his decease:

"As a Judge, the reputation of Lord Langdale has, at times, fallen somewhat below what was expected of him in the earlier years of his professional life. He wanted that boldness of judgment and self-guiding energy which has enabled our great lawyers to apply, and even to frame the result of scientific analysis with instinctive felicity and precision; but he was unsurpassed in the lucid and methodical exposition of the facts with which he had to deal. His elaborate and cautious dissection of every case before him, led him by a safe though slow process to the discovery of truth; and the subtlety of his logical powers enabled him to unravel, with indefatigable accuracy, the most intricate chain of reasoning. A scrupulous care of the rights of parties, a strict attention to the accuracy of money accounts, for which he had a natural predilection, and a stern denunciation of any attempt of professional fraud, were the never-failing characteristic of his judicial administration. Lord Langdale seemed to have been especially qualified by nature to be a Judge; the whole tendency of his mind

was the pursuit of truth and the detection of error ; to award to every one his full due, and show favour to none, but justice to all, seems to have been the grand object of his life."

To follow him, however, throughout his career on the bench would neither be profitable nor entertaining; for the professional life of an Equity Judge (the Lord Chancellor, of course, excepted) is passed in the dull routine of business, listening to prolix speeches on technical points, and delivering weighty decisions on questions rarely possessing much interest to any but the parties litigant or their advocates. He has none of the exciting changes which are constantly occurring in a Common Law Court, whether at the bar, on circuit, or in banc. In Chancery no witnesses are examined and cross-examined before the Court, as at Common Law. There is no summing up and charging the jury—no eloquent declamation where the feelings of the jury as men, as husbands, and as fathers, are appealed to—no cutting satire exposing vice and crushing tyranny—no criminal prosecutions or state trials to enlist the sympathies, or raise the indignation; but the Equity Judge sits day after day passively listening to fine-drawn conclusion and subtle interpretation on the construction of wills and codicils; on intricate partnership transactions, on unimportant points of practice, and exceptions for impertinences, with the thousand other equally uninteresting subjects which are brought into an Equity Court.

At Common Law all the proceedings in a cause take place in a day (a trial lasting beyond that time being the exception). The opening speech and the evidence

for the plaintiff are followed by the speech for the defendant and the evidence to support it; then come the plaintiff's reply, the summing up of the Judge and his charge to the jury, and then their verdict: but not so in Equity; there, after both parties have gone over their points until the Judge is sick at heart by their tedious repetitions—the Judge, in two-thirds of the cases brought before him, takes time to consider his judgment—and reads over, in private, all the proofs and exhibits, and compares them with his own notes upon the counsel's arguments, to ascertain if they have correctly informed him of all the facts and merits of the case.

One day's proceedings would, perhaps, be a fair sample of each day's work, and yet it would give but a very inadequate notion of Lord Langdale's judicial life. I shall, therefore, endeavour to pourtray that life so as to bring it vividly before the reader's eye, and in so doing I shall not bind myself to any particular order of narration.

His hour of sitting was ten o'clock, but, he seldom went into court till about a quarter of an hour after ten. He was, however, always in his private room ten minutes before ten, and he there gave audience to any officer of the Court who wished to have an interview with him, or he transacted such business relating to the Records as the time permitted him to undertake. He never began any new matter, if it was opposed, after three o'clock (unless, perhaps, on Seal-days); but he often sat until four or later to finish anything that was begun.* Latterly, however, he generally rose soon

* He was sworn in on the 19th of January, 1836, and sat daily

after three, and would even interrupt an argument for that purpose; in fact, he had lived to experience fatally in his own case, what he was from the beginning of his legal career in the habit of asserting, that no Judge could sit more than five hours a day with safety to himself or advantage to the public.

By such unremitting attendance to his duties, he got through a great amount of business; so much, indeed, that on several occasions he was at a stand-still for causes to be heard. When this happened, he would write to the Lord Chancellor to report the fact, offering to fill up his vacant time by undertaking any other official duty the Chancellor might think fit to put upon him on the occasion. If the Chancellor did not require his assistance, still he would go down to the Rolls every day at his usual hour, whether there was anything in his cause paper or not; in order to be ready for any application that might be made. If none were made within an hour or so, he would return home, or devote his time to the Record service, or anything else he had in hand.

On one occasion (13th November, 1841) when speaking of the probability of all the causes in his own and the Lord Chancellor's book being exhausted, he said he was very glad, as he should then have more time for

(except on the 6th of February), until the 31st of March. There were sixty-one morning sittings, and one evening sitting. In one instance he sat nine hours and a half in one day,—*viz.*, five hours in the morning and four and a-half in the evening, and on several days the morning sittings were protracted to seven and seven and a-half hours. The total number of hours of sitting amounted to three hundred and sixty-three, giving an average of very nearly six hours to each sitting.

other purposes, and that, as soon as his own paper was got through, he should sit three days in the week on causes, as they became ready for hearing, and he would himself take references the other two days in the week, which he thought would be most beneficial to the public, by easing the Masters of much labour. The Master of the Rolls is himself the chief of the Masters, and Lord Langdale considered there was no difficulty in his taking upon himself the functions of a Master, if he had leisure so to do.

I would select the following among many other instances of the beneficial results to the Suitors in his Court, from his unceasing application to his duties. On the afternoon of the 4th August, 1847, he rose for the long vacation, having finished everything, and not having a single judgment in arrear, and he wrote to the Lord Chancellor to tell him so. And again, on the 21st of March, 1849, the Court rose at twelve o'clock, his Lordship having got through everything, and nothing left in arrear. He reported the fact to the Chancellor.

Nothing could exceed his attention to public business; and as he himself was so constant in his attendance, he expected nothing less from every member of his bar; he would never allow a cause to stand over by reason of the absence of counsel, whatever might be the cause. His particularity in this respect was soon discovered, and it was not often put to the test. However, on the 20th of January, 1844, he had a cause struck out of the list on that account; and he said on the occasion that he had done a similar thing soon after

he came to the Bench, and had had no necessity to do so again until that day.

One instance will be sufficient to show how particular he was that public business should not be delayed for any private cause. One of the leaders of his bar (for whom he entertained not only the highest respect, but also a brotherly affection) was called out of Court, with the intelligence that his mother was dead: Lord Langdale nevertheless required that the causes should go on in his absence.

This was one of the cases, in which, by sacrificing private feeling to public duty, he exposed himself to the observation of those who could not appreciate his conscientious feeling; it was said, by some few, that he ought to have terminated the business of the Court for the day at least; those, however, who had their causes ready for hearing were not of the same opinion, and Lord Langdale said, on hearing the remark, "That gentleman is one of my most esteemed friends, and I sympathize sincerely with him on his affliction; but as I could not stop the progress of public business if the junior counsel in the cause had met with a similar bereavement, I should hold it unjust to stop it because the misfortune had occurred to a leader, who is my intimate friend."

If Lord Langdale refused to sacrifice public duty on the altar of friendship, he was equally scrupulous when self was concerned, and allowed no private considerations whatever to interfere with the discharge of his judicial functions, and the claims of the Suitors in his Court. He held public duty to be of paramount importance to private interests.

He was most patient in listening to the arguments addressed to him, and though some of the counsel who were in the daily habit of pleading before him never made unnecessary repetitions, as they knew no point of consequence would be overlooked, yet there were many who had not the same consideration, or perhaps power of compression. One day he was quite fatigued with a heavy motion, which had lasted three days, and he complainingly said,—"They really have no mercy on me; over and over again the same thing. It 's more fatigue than can be imagined."

He was extremely particular as to the custody of Wards of Court, and always exhibited in his manner much severity towards any one committing a breach of faith against a ward, or deception of the guardian appointed by the Court; his reprimands and lectures on these occasions have been complained of, as being harsh, and unnecessarily severe; but this sternness was very unnatural to him, and he once said, when the parties had retired, "It pains me to be angry, but I must speak strongly or they will not think me in earnest; besides I wish the guardian to see that he will be supported in any measure of strictness or severity which he may pursue."

On one occasion (July 23rd, 1842), a motion was made to dismiss a bill, on the ground that the subject matter was under ten pounds, and according to the old books "*beneath the dignity of the Court.*" He dismissed the bill with costs, although the same was increased by interest and costs beyond the ten pounds, and although it was argued, that it was a case of fraud, and that the rule did not extend to cases of

fraud. But he took the opportunity of saying that "the dignity of the Court was an unfortunate phrase; the dignity of the Court was best consulted by doing justice, however small the amount;" but he considered the ground to be, that it was mercy to both parties to put an end to litigation in a case where, owing to the cumbrous and expensive machinery of the Court, it was impossible that either party could eventually derive a benefit.

Speaking of the dignity of the Court when he was at the bar, on the 28th of April, 1835, in the suit of the Attorney-General *v.* Ironmongers' Company, he said, "The just dignity of the Court ought no doubt to be maintained; but dignity is a word too often misunderstood. What I chiefly lament in this case is, that the parties should be compelled to come here, at a heavy expense, to have their cause heard a third time, when the judge before whom the cause was re-heard ought to have made a decree." *

Those who daily viewed Lord Langdale on the bench,

* For the benefit of the unprofessional reader, I venture to give Lord Langdale's explanation of the legal meaning of an appeal. "It is the process by which a cause is reproduced for the consideration of another and superior judge. Its object and purpose is to correct an alleged error or mistake of the judge by whom the cause was before heard and decided. If you believe that the judge ought to have decided differently upon the case actually brought to his attention, your proper course is an appeal, and the advantage of it is to correct the error of the judge upon a case ascertained or ascertainable from the evidence before produced. The peculiar mode of proceeding in the Court of Equity makes it necessary to distinguish between an appeal and a re-hearing with accuracy. *A re-hearing* is the process by which a cause is reproduced for the consideration of the *same* judge by whom

and had the good fortune to observe the way in which he upheld his office and maintained his rank, could not but feel that he at least was fully alive to what constituted the true dignity of a high judicial officer.

He often complained of the want of communication between the Equity Judges, and said that it was his

it was before heard and decided. Its object and purpose is to correct any error or omission of statement or argument which the parties may have made in presenting the case to the judge. If you believe that the judge would have decided differently if some particular argument or authority (which you were entitled to bring to his attention, but did not) had been addressed to him, your proper course is a re-hearing—and the advantage is that all the facts, or all the evidence of the facts having been before heard, the cause is narrowed to the argument, authority, or application, which is to be brought forward on the re-hearing.

In some sense, a re-hearing must necessarily be in the nature of an appeal. The fact or evidence being the same, you may believe that upon other or better argument the judge would decide differently, and the re-hearing gives the opportunity of producing this other or better argument, and in the process there may be said to be an appeal from the judge to himself: but still, where the case and the evidence are the same, and the judge is the same, the proceeding is no more than a re-hearing. Where the case and the evidence are the same, but the judge is different, the proceeding is an appeal. Where the case and the evidence are different, whether the judge be the same or not, the proceeding is neither an appeal nor a re-hearing, but a new case, and an original hearing.

In cases of appeal both parties are confined to the same case and evidence which were submitted to the judge appealed from.

In cases of re-hearing the parties are at liberty to enforce the case and the evidence which they have prepared at the time of the original hearing, and might then have produced: and thus it is that in Equity a re-hearing is apt to be converted into a new trial, in which new facts are presented.

The House of Lords, in reference to the Court of Chancery, is a Court of Appeal only. The cases there are discussed and decided on

opinion that the Equity Judges ought to meet the Lord Chancellor every morning in a common room, before going into Court, in order that anything special which had occurred might be mentioned and considered;* but this he knew was so contrary to the feelings of the Lord Chancellor (Cottenham), who had great jealousy of any interference with his appellate power, that it would never take place during his time at least.

Nothing did Lord Langdale disapprove of more than long vacations. He thought it better for judges as well

the evidence and circumstances which were presented to the judge on the original hearing, and no new fact is allowed to be produced.

On the contrary, in reference to the Master of the Rolls and Vice-Chancellor, the court of the Lord Chancellor is properly a court of re-hearing only. The Lord Chancellor is entitled to treat the case precisely in the same manner as the judge at the original hearing might have done. If the parties were, at the original hearing, prepared with evidence which they did not then produce, the fact of its non-production on that occasion is not a valid objection to its production before the Lord Chancellor, and if it be produced, it is manifest that the hearing before the Lord Chancellor is an original hearing, and that he has to decide on facts not produced to the original judge."

* Lord Langdale, though an independent judge, would never act in certain matters without the sanction of the Chancellor, whom he considered his chief; and this reminds me of an anecdote on the subject, which I repeat, as I do not remember to have seen it in print:—

"I look upon my Court," said Lord Thurlow, "and that of the Rolls, to be something like a stage-coach, which, besides the skill of the coachman, requires the assistance of an able postilion to lead the fore-horses, and pick out the best part of the road. Now, if I have got an ignorant *furze-bush headed* postilion, by G—, he may overset the coach, and tumble us into the ditch."

The Master of the Rolls alluded to was Sir Pepper Arden.

as the public, that there should be no settled vacation at all, though he admitted that some relaxation was necessary, both for judge and counsel; he alleged that it would be preferable to close the Courts one day in each week, instead of for three months at a time; or what would be better, that there should be a relay of judges and counsel, so that the Court might be always sitting. But this last he considered impossible at present; and he never liked to press his own opinions against the general feeling in favour of vacations.

One day, on hearing that the Court was to rise on the 2nd of August till the 2nd of November, for the long vacation, he exclaimed with considerable indignation, "The Court is now about to close for a quarter of a year; it is a scandalous shame—the door of justice never should be closed."

Before Lord Langdale's time the necessary business of the vacation was performed by the Lord Chancellor; and many anecdotes have been told of visits on such occasions to Lord Eldon, at his seat in Dorsetshire. In those days the Master of the Rolls held himself to be an independent judge, and was not in the habit of rendering assistance during the holidays to the Chancellor. Lord Langdale, himself a great disciplinarian, felt the impropriety of this, and from his first appointment he considered himself bound, to the best of his power, and on every possible occasion, to relieve the Chancellor in the discharge of the onerous duties of his office. He knew that the labours of the Chancellor were more than could be properly performed by any one man, and he thought

it hard that to the Chancellor alone the vacation should not be considered sacred. He, therefore, from the time he took his seat at the Rolls to the appointment of the two additional Vice-Chancellors (a period of about six years), regularly performed the duty of vacation Judge alone. After those appointments an arrangement was made by which the Master of the Rolls and the three Vice-Chancellors, each in turn devoted one vacation to the transaction of urgent business.

CHAPTER V.

CONDUCT AS TO COMPLAINTS AGAINST OFFICERS OF HIS COURT. — HATRED OF TRICKERY. — ANECDOTE. — HIGH MORAL TONE AND DECORUM OF THE ROLLS COURT. — HIS INDIGNATION AT ANY UNFAIR MODE OF CONDUCTING A CAUSE.—HIS JUDGMENTS COMMONLY WRITTEN OUT BY HIS OWN HAND.—HIS CONDUCT IN CONSENT CASES.—HIS CONFIDENCE IN THE STATEMENTS OF COUNSEL. — HIS WISH TO DECIDE ACCORDING TO THE LETTER OF THE LAW.

WHENEVER any complaint was made against any officer of his court, Lord Langdale immediately inquired into it, and generally insisted on the party complaining making an affidavit on the subject; indeed he frequently stopped the cause for that purpose, and in almost every instance it turned out to be unfounded.

I have already stated that he handed over his judgments, as soon as they were given, to the reporter, who always sent them back to him with a "proof sheet" for his corrections. In one case (the Attorney-General *v.* the Ironmongers' Company) the reporter had printed certain remarks that his Lordship had felt it necessary to make on the impropriety of the Attorney-General holding a brief for any person but the relator, and he remarked that, "the reporter had not done justice to the Attorney-General (Sir John Campbell), who behaved so well—so gracefully he might say — on the occasion, and who

argued the case with such ingenuity and great talent. There is," he said, "no doubt that Campbell, Pemberton, and Follett are by far, very far, the first men at the bar." This was said in 1847.

He was peculiarly sensitive of wounding the feelings of another, and whenever he had occasion to speak unkindly to, or to reprove any of his bar, it always gave him great pain; and he used to say that he never looked back with any satisfaction on those occasions.

His hatred of trickery was unconquerable, although if such were attempted against him, he well knew how to foil it.

For this reason he could not bear Serjeant ——, owing to a trick which the Serjeant played him when they were opposed to each other as counsel before a Committee of the House of Commons, where, after deprecating anything but a just, *bonâ fide* decision, the Serjeant contrived to bring all the members of his way of thinking into the room, and then suddenly closed his speech, saying, "This is my case." The consequence was, that Mr. Bickersteth was unexpectedly called on to reply, without having had time to arrange his matter, and on requesting time to do so, the majority refused to give it him, and directed him to proceed at once. He had therefore nothing left but to repay the Serjeant in his own coin, and he accordingly began to comment on the evidence, and in so doing proceeded to read, word for word, all the evidence, which filled a thick folio volume. After reading for a short time, his audience began sensibly to diminish, and when he intimated that it would be desirable to adjourn, with a view of enabling

him to condense his speech a little, his proposal was received with enthusiasm.

The Serjeant pretended that it was a good joke, and said he did it, as he knew Bickersteth could not speak against time, which the latter confessed was very true, but he told the Serjeant that he considered his conduct in a very serious light, and that he should never trust him in anything.

"There is no doubt," said Lord Langdale, on telling this anecdote, "that an unprincipled tribunal, like that of a Committee of the House of Commons, occasions a want of principle in the bar which attends it."

The high tone which Lord Langdale adopted in his own court, and his abhorrence of fraud and trickery, which he could not conceal, gave a moral atmosphere to the Rolls Court during his time, which was very remarkable. Supported as he was by a bar which comprehended men of the highest talent, and the strictest probity, his court was a school for the study of judicial morality, and the soundest maxims of equity, while the stately demeanour of the judge, and the respectful carriage of the bar, contributed to produce a general silence and decorum which contrasted strangely with the noise and hubbub too frequently met with in courts of justice.

There is nothing that an upright mind so much despises as falsehood and evasion; and no high-minded judge will ever forgive misstatements either of facts or law. "Sir Matthew Hale," says Burnet, "abhorred those too common faults of misreciting evidence, quoting precedents or books falsely, or asserting things confidently, by which ignorant juries, or weak judges, are

too often wrought on. He pleaded with the same sincerity that he used in the other part of his life."

Lord Langdale had as great an abhorrence of that mode of conducting a case. He considered it as an insult to the judge, as well as a crime against morality, and when roused by the very rare occurrence of a case of that description, his burst of indignation was occasionally startling. Those who knew him could perceive the coming storm by the nervous shifting of his seat, and they averted its effect by abandoning their course, or skilfully changing their argument; but on the devoted counsel who proceeded unobservant of the impending consequences, the storm would break in all its force. It cannot be denied that Lord Langdale, calm and philosophic as he was in general, had not his temper upon such occasions so completely under his control as he himself would have wished. The severity of his rebukes engendered bitter and lasting animosity against him in the breasts of those to whom they were addressed, and on the whole, perhaps, the bar, excepting those who knew him best, looked upon him more with fear than with affection.

Whenever the difficulties of the subject, or the importance of the case, or of the principle involved in it, required more than usual consideration, it was the habit of Lord Langdale to reserve his judgment, and to write it out with his own hand before he pronounced it.

He did not generally like to deliver any judgment offhand, though he felt no doubt on the subject, lest the suitor might think that sufficient care and deliberation had not been given to his case: for he held, that it was

not only necessary to do justice, but also to satisfy the party and the public in general that justice had been done.

I have mentioned his practice while at the bar of analyzing all his cases, so as to make himself perfectly master of them; and he adopted the same plan in those which he heard on the bench. He was most particular in arranging all his facts chronologically, considering that when that was done the chief difficulty of the case not unfrequently disappeared.

Many of his judgments, written in his own hand, are still extant; and they show that he bestowed extraordinary pains upon them, as pieces of composition. Though he cared nothing for euphonical effect, and thought that words were perverted from their proper office when they were employed in uttering anything but precise logical truth, yet his language was always correct and pleasing to the ear. He never repeated his words, or his thoughts, unless for the purpose of making a greater impression.

Lord Langdale considered it of the highest importance that the world should know what were the facts of the case on which he founded his judgment; and that those facts should appear as coming from his own mouth; he therefore took great pains with those portions of his judgments, and rather prided himself upon them, and with good reason too.

He disliked display of every kind—of pedantry, perhaps, more than any other—and where quotations from Latin books were of necessity introduced into his judgments, he preferred, in general, to give them in his own

English translation. This was particularly observable in the case of the Duke of Brunswick *v.* The King of Hanover.

Many of his written judgments show more strongly than appears from the printed reports of them how indignantly he regarded an unjust defence. They contain observations which arose in his mind when fresh from the hearing of the cause; but which on maturer reflection he struck out as not absolutely necessary to the enunciation of his decree.

Nothing did Lord Langdale desire or aim at more than to do justice between man and man. He thought the office of a judge the most responsible of any on earth, and that it was his most sacred duty to administer justice impartially, which could not be done, except by bestowing the most patient attention to the investigation of facts. Speaking one day of his sense of responsibility he said, "After all, a Judge's duty is very hard work,—people give you no credit for the conscientious wish to do right, and for the extreme mental labour and anxiety it occasions. They ask, Why don't he give his opinion just as it strikes him, and decide this way or that way at once? They have no idea," he added impressively, "of the responsibility I feel that my opinion, such as it is, should to the very utmost of my abilities be a right one."

Though he condemned delay, and was conscious of the popularity which an appearance of getting rapidly through business insures to the judge, he never permitted himself to hurry over a case even of the most trifling importance, and more, perhaps, than any of his

predecessors, he avoided referring matters to a Master, which he could determine himself. He would have carried this principle further, but was checked by the opinions held on the subject by the Lord Chancellor Cottenham. He did, however, go to a great extent, and he gained for his Court no small unpopularity by the scrupulous nicety with which he looked into the evidence in those cases of pedigree and other matters where he was in effect performing the duty of a Master. Nothing he knew was more easy than to dispose of business by transferring the difficulty from himself to a Court of Law, or to the Master; but such a course he deprecated wherever in his opinion, and according to the doctrines then held, it was possible to avoid it; and he despised the popularity which might have rewarded a different course of conduct.

The consent business of the Court received his most anxious attention. His experience told him that where all parties were agreed in endeavouring to obtain a particular result, it became more than ever the duty of the Judge to see that the interest of those who trusted to the Court for protection should not be overlooked. He accordingly watched such cases with a jealous eye, and, as a reward for his conscientiousness, acquired no small unpopularity among his practitioners. The consent business at the Rolls fell off, and was taken elsewhere, and loud complaints were made of what was called his unnecessary strictness. Of these things he was well aware, but neither the love of popularity, nor the fear of censure, where he felt that either the one or the other was unmerited, ever caused him to swerve from the

course of duty he had prescribed to himself. On the contrary, he was much amused with an anecdote he had heard of some barrister, who, on leaving the Rolls on his way to Lincoln's Inn, was asked, "Well, how are they getting on at the Rolls this morning?"—"Oh, much as usual,—the Master of the Rolls is opposing the consent petitions." His Lordship felt no disgrace in the imputation, and was in the habit of repeating the anecdote with much relish.

In some instances, which it would be uninteresting to the general reader to enumerate at length, he relied altogether on the statement of counsel. If, for example, a defendant's counsel assured him that a cause was not proper to be heard as a short cause though so set down, he would refuse to hear it, and would order it to be replaced in the general paper. So if counsel represented that they had read a marriage settlement, and that it did not affect a particular fund, he would act upon their representation, and dispose of the fund accordingly. Indeed, he called upon counsel to assist him in such cases,—a responsibility which at first was not willingly undertaken by the Bar. On this subject, he observed on one occasion, "With respect to the task which I may be considered to have imposed upon counsel, I wish to observe, that it arises from the confidence which long experience induces me to repose in them, and from a sense which I entertain of the truly honourable and important services they constantly perform as ministers of justice, acting in aid of the Judge before whom they practise. No counsel supposes himself to be the mere advocate or agent of his client to gain a victory, if he

can, on a particular occasion. The zeal and the arguments of every counsel, knowing what is due to himself and his honourable profession, are qualified not only by considerations affecting his own character, as a man of honour, experience, and learning, but also by considerations affecting the general interests of justice. It is to these considerations that I apply myself, and I am far from thinking that any counsel who attends here will knowingly violate or silently permit to be violated, any established rule of the Court to promote the purposes of any client; or refuse to afford me the assistance which I ask in these cases."

While on the subject of his bar, it may be mentioned that he entertained very strong objections to counsel receiving money generally on account, without the causes and matters for each particular fee being specified. He said *in re* Smith:—"I cannot part with this case without stating my regret that a practice likely to lead to great abuse has arisen. I had always understood that it was irregular for the counsel to receive from the clients any sum of money except for stated and specified fees for particular matters of business done or to be done. It is quite obvious that to receive money generally on account, without specifying the causes and matters and each particular fee, leaves the client open to imposition in a manner that might otherwise be avoided; and I cannot help hoping that the circumstances which have occurred in this case, however unfortunate in themselves, may tend to restore, where necessary, the former course of conducting business between counsel and solicitors." His anxiety that no suitor should obtain the

advantage of an early hearing to the prejudice of another suitor, whose cause had a right to precedence, was another marked feature in his career on the Bench; but he did not admit that a suitor who had once set down his cause as ready for hearing, had a right to complain if the cause came on earlier than was anticipated. He said from the Bench on one occasion:—

"The suitors, whose causes are ready to be heard, are sometimes delayed by want of sufficient force in the Court to dispose of the cases which stand before them; a state of things which I sincerely deplore, and from the severe pressure of which I have been, and am, most anxious to relieve suitors as far as I can. There can be no doubt, however, that, generally speaking, the suitors who have priority in the paper are entitled to be first heard, and that a suitor whose cause stands early in the paper, may justly complain if a cause which stands lower down is advanced and heard first to his prejudice; and how constantly I am in the habit of protecting the interest of the suitors in this particular, must be known to all who attend to the course of business here. But no suitor whose cause is waiting to be heard, has a right to complain of its being advanced, though other suitors have a right to complain of causes being advanced to their prejudice."

He held very stringent opinions as to the necessity of a Judge deciding according to the letter of the law, or to the decisions of former Judges, and not according to his notion of what the law ought to be; and in this he was fully borne out by Lord Eldon, who declared, "that it was his duty to submit his judgment to the authority of

those who had gone before him, and it would not be easy to remove the weight of the decisions of Lord Hardwicke and Lord Apsley. The doctrines of this Court," he continued, "ought to be as well settled, and made as uniform almost as those of the Common Law, laying down fixed principles, but taking care that they are to be applied according to the circumstances of each case. I cannot agree that the doctrines of this Court are to be changed with every succeeding Judge. Nothing would inflict on me greater pain in quitting this place, than the recollection that I had done anything to justify the reproach that the equity of this Court varies like the Chancellor's foot."

In the same spirit, Lord Langdale expressed himself thus in the case of Bullin *v.* Fletcher:—"It has been urged at the Bar that the rules and distinctions acted on in these cases have been regretted and disapproved by eminent persons. As an argument of this nature may make the Judge more cautious in concluding that a rule, which he supposes to be applicable to the case, really is so, there is no impropriety in it; but whether the authority relating to the revocation be open to great objection, as has been said, and whether it is or not a proper subject of regret that they should have been applied to cases of this nature, I do not think that I have authority to deviate from decisions which have been acquiesced in, and have for many years furnished a rule for determining the rights to property. I conceive it to be the duty of a Judge to administer the law according to the evidences of it which are found in the authorities, and in the recognised practice of the profes-

sion. The inquiry before him is not what the law ought to be, but what it is, and how it is to be applied in the particular cases which are under consideration. It may be regretted that the law upon any subject should be in such a state as to induce eminent Judges and writers to express their disapprobation of it, and their regret that they are bound to give it effect; but it would be still more to be regretted if Judges should be found who thought themselves at liberty to declare the law according to their own fancies of what it ought to be; all stability would be lost, and every thing tend to confusion."

CHAPTER VI.

HIS READINESS TO ALLOW OF APPEAL FROM HIS DECISIONS. — HIS OPINION ON THE ADMISSIBILITY OF THE EVIDENCE OF AN INTERESTED WITNESS.—REFLECTIONS ON THE SUBJECT.—HIS ACQUAINTANCE WITH CIVIL AND CANON LAW, AND CONTINENTAL CODES.—REMARKS IN THE CASE "NELSON *v.* BRIDPORT."—ATTENDANCE AT THE SITTINGS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LORD LANGDALE never discouraged appeals, or felt offended at the suggestion that his decision would be taken before a superior tribunal. In important and doubtful cases, it was a satisfaction to him to know that the mischief which he might occasion by an erroneous opinion was not irremediable, and he was in the habit of proposing or facilitating the appeal. Thus, in the case Tullett *v.* Armstrong, he said, "As this subject has given occasion to considerable discussion, and as a decision pronounced here cannot settle the question, which is of very great importance, I am desirous that the case should be brought under the consideration of a higher tribunal without any unnecessary delay, and to afford every facility in my power for the correction of any error into which I may have fallen."

In a similar case, Lord Cottenham, when Master of the Rolls, had come to a different conclusion to Lord Langdale, and as Lord Cottenham was then his

superior judge he could not but feel more than usual anxiety.

An appeal did take place, and Lord Cottenham confirmed, though reluctantly, Lord Langdale's judgment.

It was for this judgment, that Sir Edward Sugden is reported to have said that the ladies of England ought to erect a statue in gold to Lord Langdale.

If the case of Tullett *v.* Armstrong affords an illustration of the readiness with which Lord Langdale submitted his opinions to appeal, his remarks in the case of Hutchinson *v.* Stephens, 15th of July, 1837, exhibit in a characteristic manner the tenacity with which he abided by opinions he had once formed. He said, "I am obliged to Mr. Tinney for the candour with which he has expressed himself respecting the nature and circumstances of this particular cause, and for the zeal and ability with which he has argued against the expediency of the course which was adopted by me in the case of Mountford *v.* Cooper, and other cases of a similar kind. There is no error so great as that of persevering in an error pointed out, and I hope that I shall always be open to conviction ; but I did not adopt the course now observed upon, without great consideration; and I am still so entirely persuaded of its expediency, that until other arguments have convinced me that it is erroneous, or until I am corrected by a higher authority, I shall consider it to be my duty to adhere to it."

A case had been heard before Lord Langdale, which involved a question as to the admissibility of a witness on the ground of interest : Lord Langdale decided

against the admission of his evidence, on the ground that he had an interest, and the report of his decision was ready for the press. In the mean time, the Lord Chancellor reversed that decision, and Lord Langdale was asked whether it was his pleasure to have the case published, as it had since been overruled. He seemed indifferent on the point, but in connexion with it remarked, "It is curious how different are the constitutions of men's minds. I agree entirely with the Lord Chancellor, that it is better to admit evidence of this description, and to let the circumstance of interest weigh well in the consideration of what credit is due to it, but that is against the principle of the law as it now stands, and I think that while that principle remains undisturbed by any legislative enactment, it is the duty of the Court frankly and fairly to act upon it, and not to try to fritter it away by nice distinctions. The rule itself might, I think, be altered with great advantage to the interest of justice, but then it is the Legislature which should do it. I said as much on this very case to the Lord Chancellor, and he admitted I was right on principle, but then, he says, 'You must recollect that all the improvements in the law have in fact been made by devices of the judges in getting rid by a side-wind of obnoxious rules.' 'True,' I replied, 'but that was owing to the unacquaintance of the Legislature with such matters, and to the want of a proper officer in the Ministry who should from time to time look to the administration of the law, and to the improvements and alterations which the lapse of time and the growing intelligence of the people may require. But is such a

state of things to continue?' The Chancellor shrugged his shoulders and made no reply."

The question of what is judicial evidence is a subject of vast importance in the science of jurisprudence, and Mr. Bentham conferred no slight benefit upon the public when he brought forward his great work on the subject; if he had done nothing more, he would be entitled to a high rank among Law Reformers. It is not necessary to enter into that question here; and reference has been made to the subject only to show that Lord Langdale entertained similar opinions to that eminent man, on the impolicy of excluding evidence on the ground of interest.

At the rising of the Court, on the 6th May, 1842, Lord Langdale went down to the House of Lords, to attend a committee on the Evidence Bill, for he said he thought no testimony should be rejected on the ground of interest; what weight should be given to it is another question. Lord Langdale's is certainly the common sense view of the subject, and is undoubtedly the right one, though many men who have given attention to the subject, are of a different opinion.

Certainly no law can be good which is against reason and common sense, and that rule which entirely excludes the evidence of persons having an interest in the result of the cause seems to be utterly inconsistent with reason and justice.

What, for instance, would be the conduct of a sensible man, unfettered by the rules of law, in endeavouring to inform himself upon a question of fact ? Take

the case of a master of a family in settling a dispute between two of his children or servants; would he shut his ears against a part of the evidence? would he refuse to hear one witness, because he might have some interest in the decision of the dispute? Instead of refusing to hear the story of an interested witness, he would rather examine the nature and extent of the interest, so as to be able to appreciate the value of the testimony; and in case the tendency of his evidence should prove to be opposed to his interest, that would of course add to its weight.

Occasionally witnesses will present themselves who have a strong pecuniary interest in the event of the cause, and whose testimony, therefore, ought to be received with the greatest circumspection; the value of such evidence would be for the judge to determine—no man ought to be shut out from giving evidence, merely because he has a pecuniary interest in the event of the suit.

All men are not liars. The utterance of truth is the first impulse of the mind; a lie requires invention and premeditation—and an acute Judge or skilful counsel will extract the truth, either by a downright question, or one more artfully constructed—unwilling lips will pronounce it, and mendacity will be detected and exposed, in ninety-nine cases out of a hundred, when examined by one accustomed to cross-examine. Even in giving evidence in chief, there is something in the look of the eye, or the tone of the voice, unmistakable to an experienced person, which carries conviction and truth at once.

The law of England excluded only the testimony of persons having a pecuniary interest in the suit; but there are often stronger inducements than money to mendacity; if men are disposed to lie, the natural affections, love, friendship, revenge, vanity, are equally strong, if not stronger passions than the love of money. Was it reasonable to exclude the testimony of a man, merely because he had a small or even great pecuniary interest in the decision of the suit, and yet admit, without scruple, his evidence when the life of his child, his mistress, or his friend, was at stake?

Much, very much more, might be written on the subject; but it would be irrelevant to the present work, especially so, as the law has lately been altered, and this strange anomaly expunged from the legal tablet.

In addition to his profound knowledge of English jurisprudence, Lord Langdale was deeply read in the civil and canon laws; for he knew that our system of equity is essentially derived from the former; and he had something more than a superficial acquaintance with the codes of Continental states, although, speaking on the subject in the case of Nelson *v.* Bridport, he modestly says, "With foreign laws an English judge cannot be familiar; there are many of which he must be totally ignorant; there is in every case of foreign law an absence of all the accumulated knowledge, and ready associations, which assist him in the consideration of that which is the English law, and of the manner in which it ought to be applied in a given state of circumstances to which it is applicable; he is not only without the usual and necessary assistance afforded by the accumu-

lated knowledge, and able suggestions contained in the arguments which are addressed to him, but he is constantly liable to be misled by the erroneous suggestion of analogies which arise in his own mind, and are pressed upon him on all sides. These difficulties are obvious enough even in cases in which he may have before him the very words of that which is proved to have been the law applicable to the events in question. Even if we suppose it to be proved that the law has not been legislatively repealed or varied, and has not fallen into disuse, and that the words have been accurately translated, still the words require due construction, and the construction depends on the meaning of words to be considered with reference to other words, not contained in the mere text of the law, and also with reference to the subject matter, which is not insulated from all others. The construction may have been, probably has been, the subject of judicial decision; instead of one decision there may have been a long succession of decisions, varying more or less from each other, and ultimately ending in that which alone ought to be applied in the particular case. The difficulty which arises under such circumstances is obviously very great; but it is vastly increased when the law itself, or the words in which the law is expressed, has never been authentically declared; when it is to be discovered from decisions, or usages, or from the opinions of unauthorized writers, who may have written much that is acknowledged to be existing law, and also in the same books what is contrary to existing law. The decisions were subject to be, and may have been altered by subsequent decisions, and the

precise application of them to the case in question may only be ascertainable by means of an accurate historical and legal deduction from all that has passed in the courts on the subject: and a judge who seeks information as to a foreign law, has not in himself the means of distinguishing the correct from the incorrect proposition of a text writer. Whoever has considered the nature of the difficulties which frequently arise in our own courts in the investigation of English law, applicable to particular cases, and the mode of reasoning and investigation by which it is endeavoured to surmount those difficulties, will perceive what presumption it would often, nay, generally be, in an English judge to attempt to apply the same process to the investigation of a foreign law, and the consideration of its proper application to particular cases. The rule of English law, that no knowledge of foreign law is to be imputed to an English judge sitting in a court of only English jurisprudence, is undoubtedly well founded. And as cases arise in which the rights of parties legislating in English courts cannot be determined without ascertaining to some extent what is the foreign law applicable in such cases; the foreign law and its application, like any other results of knowledge and experience, in matters of which no knowledge is imputed to the judge, must be proved, as facts are proved, by appropriate evidence—that is, by properly qualified witnesses, or by witnesses who can state from their own knowledge and experience gained by study and practice, not only what are the words in which the law is expressed, but also what is the proper interpretation of those words, and the legal meaning and effect of

them as applied to the case in question. Such I conceive to be the general rule; but the case to which it is applicable admits of great variety. Though a knowledge of foreign law is not to be imputed to the judge, you may impute to him such a knowledge of the general art of reasoning as will enable him, with the assistance of the bar, to discover where fallacies are probably concealed, and in what cases he ought to require testimony more or less strict. If the utmost strictness were required in every case, justice might often have to stand still; and I am not disposed to say there may not be cases in which the judge may, without impropriety, take upon himself to construe the words of a foreign law, and determine their application to the case in question, especially if there should be a variance or want of clearness in the testimony."

Lord Langdale has been censured for leaving his own Court, and sitting so often at the Privy Council,* but correspondence exists to show that he never sat

* It is necessary to state that Lord Langdale was fully aware of the inconveniences resulting from it, and that he did all in his power to remedy it. Having been told that it was the opinion of the leading counsel practising at the Rolls Court, that his frequent absences would be the means of breaking up the good bar that attended the Rolls, he informed the Chancellor of it, and said that before he could consent to take the direction of the Judicial Committee, he must make arrangements with the members of the Council and his own bar, for he did not like the idea of putting his bar to inconvenience, although it was not his fault, and he determined to propose an arrangement for the benefit of his bar, by which the Lord Chancellor should, on the days when the Master of the Roll sits in the Privy Council, take only re-hearings from the Rolls; and during the sitting of Parliament, sit in the House of Lords on the days only when the Master of the Rolls sits in his own Court.

there without the written order of the Lord Chancellor requiring him to do so; and that he always made a point of acquainting the Lord Chancellor with the state of business at the Rolls, in order that he might see to what extent the business would suffer by the withdrawal of the Master of the Rolls from his own Court. Lord Langdale adopted this course, although he thought, looking at the history of the Court, that the Master of the Rolls was the proper judge to preside in the usual sittings of the Privy Council.

He once asked Lord Chancellor Cottenham if he thought it of more importance that the Master of the Rolls should sit to hear "Wood's Will Case" at the Privy Council than to attend to the suitors at the Rolls. The Lord Chancellor answered, "I cannot say that,"—then said Lord Langdale, laughing, "If you don't say that, I shan't go."

From his first promotion to the Bench to 1846 he sat occasionally at the Judicial Committee, often at great personal inconvenience; but in that year (30th October) he received a communication from the Marquis of Lansdowne, the Lord President of the Council, stating that a greater frequency, and still more a greater degree of regularity in the sittings of the Judicial Committee would give greater value and importance to that Court, and be highly satisfactory to the suitors. He, therefore, had had repeated communications with the Lord Chancellor on the subject, and had been encouraged by him to apply to Lord Langdale for his valuable assistance in effecting the object in view.

Lord Langdale referred the subject to the Lord Chan-

cellor, in the following letter, which shows how unjust it would be to blame the Master of the Rolls for the course that he was compelled to adopt:—

South Street, Nov. 2nd, 1846.

"My dear Lord Chancellor,

"I inclose copies of a letter which I have received from the Lord President of the Council, and of my answer to it, and I request you to read them.

For reasons of which you are well aware I do not think that it would be right systematically to employ the short intervals of the sittings at the Rolls in attending to business so important, and requiring so much consideration as that which arises on the appeals and other matters which are heard by the Judicial Committee. The time which is given, must, I think, for the most part be taken from the time usually given to the Court of Chancery; and my opinion often stated and acted upon is, that I as a subordinate judge of the Court of Chancery ought not, without your express sanction and approbation, to direct any of the time usually and regularly given to the business there to any other purpose whatever.

Under these circumstances I submit the subject of the Lord President's letter to your consideration.

The Judicial Committee considered as a Court of Appeal, has amongst others, the following defects:—

1. It has not in itself power to make any adjudication whatever. It reports and recommends to the Crown, and it is only by an act of the Queen in Council that the

report, advice, or recommendation of the Committee can be converted into a judicial decision, act, or order.

2. It wants a judicial head, and is consequently deprived of the steadiness and regularity which are requisite for the due transaction of the business of a Court of Justice.

3. It is not obligatory upon the members of the Committee to attend. It is always troublesome, and often very difficult to procure the attendance of a sufficient number. Before any meeting the judges do not know with whom they are to act, and the suitors do not know by whom their cases are to be decided.

These defects cannot be satisfactorily removed without an Act of Parliament; but they may, at least to some extent, be palliated by arrangement and mutual accommodation; and it is probable that the constant attendance of some one member of the Committee would very much contribute to the regular transaction of the business there.

I suppose that the time occupied by the sittings of the Judicial Committee in the course of a year has not hitherto amounted to one-fifth of the time during which the Chancery Courts are sitting during the year; and if on consideration of all the circumstances, you should think it fit and right that so much of my time as the exigencies of the Judicial Committee may require should be taken from my Court at the Rolls, I shall willingly comply with the request of the Lord President so sanctioned by you; and I will submit to your consideration any arrangement which after consultation with others and some experience may be thought likely to

lessen the inconvenience occasioned by my absences from the Rolls Court, and by the occasional absence of one of the Vice-Chancellors, who may sometimes be required to make up the number of the Judicial Committee, or to assist on other occasions of peculiar importance.

I remain, my dear Lord Chancellor, your faithful and obedient servant, LANGDALE."

The Chancellor replied (11th Nov. 1846): "I have duly considered Lord Lansdowne's letter to you, and I fully concur with him, that it is of the highest importance to the administration of justice in the Judicial Committee, that you should agree to the proposition it contains. I am fully aware of the interruption this must occasion in the business of your own Court, but considering the present judicial power of the Court of Chancery, and the extent to which the evil of interruption may be diminished by proper arrangements, I do not hesitate to give my opinion that in acceding to the proposition of the Lord President, you will, upon the whole, most essentially advance the due administration of justice, and I, therefore, hope that you will, without delay, make such arrangement as you think best, to give your valuable assistance to the sittings of the Judicial Committee, with least possible inconvenience to the course of business in your own Court."

The subject was renewed by Lord Lansdowne, in a letter of the 15th January, 1847, "which," says Lord Langdale, in his Diary, "I showed to the Lord Chancellor, who told me that I might consider it as a request that I would attend as often as might be required to

the business of the Judicial Committee till some other arrangement was made."

Even down to November, 1850, Lord Langdale was, on public grounds, so little reconciled to any appearance of neglecting his own Court, that he wrote thus to Mr. Reeve, the Clerk of the Council:—

Rolls, Nov. 15th, 1850.

"My dear Sir,

"You are aware that my attendance at the Judicial Committee depends upon two things—

1. The consent of the Lord Chancellor.

2. The assurance that there will be a quorum of members.

Before Term I spoke to the Lord Chancellor upon the necessity of making some arrangement for the sittings after Term. His impression seemed to be that the Court of Chancery ought not to be crippled or reduced in strength for the sake of the Judicial Committee; but he said that the subject should be considered; and since that I have heard nothing, and until some arrangement is made between the Lord President and the Lord Chancellor, I cannot do anything, or make any suggestion. Personally I hold myself ready to co-operate in any arrangement agreed upon.

Yours truly,

Langdale."

There are several other letters on this matter extant, but with the following letter to Lord Truro, I hope I may be allowed to conclude the subject:—

Rolls Court, Nov. 16th, 1850.

"My dear Lord Chancellor,

"As I had the honour of stating to your Lordship before Term, it depends entirely upon you whether I shall or not attend the sittings of the Judicial Committee of the Privy Council after Term. If you think that I ought, I will do so with pleasure, as I did in Lord Cottenham's time, at his request; but I told him, as I informed your Lordship, that I do not think it right for the Master of the Rolls to leave his duty in his own Court even to attend the Judicial Committee, without the knowledge and approbation of the Lord Chancellor.

I therefore await your orders, and with a view to the notices which ought to be given, it is important that I should receive them early.

I am much obliged by your kind inquiries. I have struggled on pretty well, but almost my whole time during the Term has been occupied in only part hearing one case of exceptions, which is not yet finished.

Ever faithfully yours,

Langdale."

CHAPTER VII.

OPINIONS OF LORD LANGDALE ON VARIOUS SUBJECTS.—ANECDOTES.

I HAVE already said that, if it were possible to give a journal of the fifteen years Lord Langdale presided over the Rolls Court with so much honour to himself and satisfaction to his country, it would be very uninteresting to the general reader: no such thing, therefore, will be attempted; but such of his opinions and sentiments on various subjects, as I have gleaned from his Diaries, or have been communicated to me by friends, I shall throw together, without any strict arrangement, thinking it the better way of bringing out his character and feelings.

ACTS OF PARLIAMENT.

"Acts are passed," Lord Langdale once said, "in such a state that it is almost impossible for the Courts to act upon them, and the Judges often toil in vain to find a meaning—blunders are so continually being made in legislation, that it becomes necessary to repeal in one year what has been done in the former year, because it is manifestly erroneous. As soon as a defect is discovered, or what appears to be a conflicting course of proceeding, the Judge ought to report it to the Government, in order that a remedy might be considered."

ATTENDANCE OF JUDGES ON THE HOUSE OF LORDS, ETC.

In February, 18—, Sir Edward Sugden brought in a Bill for improving the Appellate Jurisdiction of the House of Lords. Among other things there was a clause empowering the House of Lords to send for the Master of the Rolls and Vice-Chancellor (if not Peers) to assist them. "From this," said Lord Langdale, "it would seem that Sir Edward Sugden was not aware that the Queen every Parliament summons the Master of the Rolls, the Chief Justices, the Puisne Judges, the Attorney and Solicitor-General, and the Queen's Serjeants, to assist her, and her good men and prelates, with their advice, and this is done by a Writ called a 'writ of attendance.' With respect, therefore, to the Master of the Rolls, such an enactment is unnecessary, and with respect to the Vice-Chancellor, nothing further was required than to petition the Queen to direct a writ of attendance, to be addressed to him as well as to the other Judges.

"The Masters in Chancery also attend the House of Lords, but on inquiry at the Petty-Bag Office, and the Crown Office, no writ is now addressed to them, nor do the Masters know by what authority they attended the House; but they considered it to be by prescription only; at least they did not know the origin of it. However, it is clear from Lord Hale that the Masters also were originally summoned by writ, and I suppose that in process of time it has been neglected, and they continued to attend without that ceremony."*

* Several instances of summonses to the Masters of Chancery

LORD CARDIGAN'S TRIAL.

The following is Lord Langdale's description of Lord Cardigan's trial:—

"The House was rather thin of Peers. The case went off in a very absurd way. The indictment was for firing at Harvey Garnett Phipps Tuckett, with intent to kill, &c.; but when they came to prove this, there was

may be seen on the early Parliament Rolls, and, if I mistake not, both Bracton and Fleta mention the fact of the Master in Chancery attending the King's Councils.

On the calling of a new Parliament, a writ of attendance is issued directed to each of the Judges, not being Peers (if Peers, they are summoned according to their rank in the Peerage), *viz.*:—

The Lord Chief Justice of the Queen's Bench.
The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
The Lord Chief Baron of the Exchequer.
The Puisne Judges of the Queen's Bench.
The Puisne Judges of the Common Pleas.
The Puisne Judges of the Exchequer.
The Attorney-General.
The Solicitor-General.
The Queen's Serjeants.

The following is the form of the writ:—

Victoria, &c. To ————, greeting.—Whereas by the advice and assent of our Council, for certain arduous and urgent affairs concerning us, the state and defence of our United Kingdom and the Church, We have ordered a certain Parliament to be holden at our City of Westminster, on the day of next ensuing, and there to treat and have conference with our Prelates, Great men, and Peers of our Realm, We strictly enjoin and command you that, waiving all excuses you be at the said day and place personally present with us, and with the rest of our Council, to treat and give your advice upon the affairs aforesaid. And in this in no wise do you omit.—Witness ourself at Westminster, the day of year of our reign.

no witness produced who knew Lieutenant Tuckett by any other name than 'Harvey Tuckett;' and the consequence was that Sir William Follett immediately objected that there was no evidence to sustain the indictment.

Strangers were thereupon ordered to withdraw, and Lord Denman stated, that he considered the objection valid, and in this he was supported by Lords Abinger, Brougham, Wynford, &c.; and then, after a little debate whether the House should at once proceed to judgment, it was decided that they would; and the question of 'Guilty, or not Guilty?' being put, Lord Cardigan was immediately acquitted."

Lord Langdale thought the case most carelessly and indifferently got up, and he was not pleased with the Attorney-General's delicate way of opening the case, and his saying there was no moral turpitude, &c. Nor was he satisfied with the way in which Lord Denman delivered judgment, merely congratulating the prisoner on his acquittal, and informing him that the decision was unanimous. Lord Langdale thought he should have stated the technical grounds on which he was acquitted, but at the same time have read him a lecture on the serious nature of the offence with which he was charged, supposing such charge had been properly borne out by evidence.

CHANCERY PROCESS.

Talking about Chancery Process, he once said, that the reasons why the process in Chancery is so unsatisfactory and so different from that in the common Law Courts were, (1), that Chancery was originally a disputed

jurisdiction, and on that account the process was made rather minatory, or threatening, than conclusive, and (2), that the Chancellor being a political officer, there was great jealousy in putting power into his hands.

CHANCERY REFORM.

The Lord Chancellor (Cottenham) told Lord Langdale, on one occasion, that if the plans of Chancery Reform would require any money from the public, he was quite sure not a farthing would be granted. To which Lord Langdale replied, "If once a proper scheme of reform were agreed upon, my task will be done, and if Government refuse to advance the money to carry it out, it would then be seen where the fault lay."

Lord Cottenham told Lord Langdale, that if ever again he had anything to do with the Court of Chancery, his first step would be to endeavour to have its machinery made applicable to small cases. Lord Langdale, of course, agreed, as a thing he had always contended for; but he said the first step must be to make the public, not the suitors, pay the expenses of the establishment and the compensations.

Speaking, on another occasion, of the proposed reforms in the offices of the Court of Chancery, he said, "I am determined not to put myself forward as the attacking party, but I am willing to march side by side with the Lord Chancellor; I will not take upon myself the odium of the assault, and leave the Chancellor the grace."

COUNSEL'S CLERKS.

Speaking of this meritorious class of men, Lord

Langdale said, "I know of no legal ground on which a counsel's clerk is entitled to demand as of right any fee or remuneration whatever from his master's clients. The custom of the profession, the desire of securing a willing attention to the business of the party, and perhaps the apprehension that the cheerful service which is due from the clerk to his master, would not be so well, or so zealously applied to the business of the solicitor, or of the party, if nothing was given to the clerk, may be reasons for clerks' fees being constantly paid, and to some extent be constantly allowed on taxation.

"I believe that counsel's clerks are generally distinguished by honesty, fidelity, and discretion. I consider them to be a very meritorious class of men, to whom great respect is due: and I mean to say nothing inconsistent with that respect which I think they so generally deserve, when I state that in my opinion, they best consult their own interest and respectability, and the highest interest of those upon whom they depend, and whom they are bound to serve, when they abstain from making claims which they cannot legally substantiate, and from raising questions which cannot be discussed without prejudice to themselves and others. The condition in life of the clerks, their means of livelihood, mainly if not entirely depend upon the fees which they are allowed to receive, according to the long-continued practice and custom of the profession; under such circumstances it is reasonable for the clerk, in any case, to expect to receive the usual fee; but the fee is in its legal character a mere gratuity, a favour indeed, for which attention and civility are reasonably

expected in return, but for which there is no legal demand."

Davies (preface 22, 23), speaking on the subject of counsel's fees, says, "Neither do our learned men of the law grow to good estates in the commonwealth by any illiberal means (as envy sometimes suggesteth), but in a most ingenious and worthy manner. For the fees or rewards which they receive are not of the nature of wages or pay, or that we call salary or hire, which are indeed duties certain, and grow due by contract for labour or service, but that which is given to a learned counsellor, is called *honorarium*, and not *merces*, being indeed a gift which giveth honour as well to the taker as the giver; neither is it certain or contracted for, no price or rate can be set upon counsel which is invaluable and inestimable, so as it is more or less according to circumstances, *viz.*, the ability of the client, the worthiness of the counsellor, the weightiness of the cause, and the custom of the country. Briefly, it is a gift of such a nature, and given and taken upon such terms, as albeit the able client may not neglect to give it without note of ingratitude (for it is but a gratuity, or token of thankfulness), yet the worthy counsellor may not demand it without doing wrong to his reputation; according to that moral rule, 'Multa honestè accipi possunt, quæ tamen honestè peti non possunt.'"

COUNTY COURTS.

In March, 1841, Lord Langdale told a friend that the Chancellor had written to him to say that he agreed to an amendment of his in the County Courts' Bill, that

the new Judges of those courts might take examinations of witnesses, *without special commissions for that purpose*—the Bill having only given them power to take the examination when special commissions were directed to them,—and he was quite pleased to find that he had been the means, at last, of accomplishing this saving of expense to suitors; and that many of his proposed reforms were being adopted one after another, of which he had begun to despair.

THE PLEA OF INSANITY.

On this subject Lord Langdale remarked,—

"There is nothing more difficult than to investigate and adjudicate satisfactorily upon the state of a man's mind with reference to its sanity or insanity, for the purpose of determining whether the man is legally bound by, or answerable for his act done at a particular time.

It is difficult to form a distinct idea of what ought to be understood by the expression, soundness of mind, and no distinct definition or statement of it has ever been given.

Generally, every man assumes himself to be of sound mind; and, considering his own state to be normal, judges of others according to his own standard.

Even if we knew what is meant by sound mind, there would still be great difficulty in determining (at least in very many cases) what are the indications of unsoundness which ought to be relied on, in distinguishing between the delusions of an insane man and the erroneous opinions, or mistaken notions, of a man generally admitted to be of sound mind. May not such a man be subject to some delusions? If a man is subject to any

delusions, can his mind be said to be sound? Does the man exist of whom it can be said he was never subject to any delusion? If passing delusions are rectified by the action of the mind upon itself, can the mind be called insane?

When the question is whether an act was done in a state of mental delusion, one of the means of judging—perhaps the most important—is by comparing the alleged act of insanity with other acts of the same person, and the general course and tenor of his life.

When you consider a man whose general course of conduct in life indicates sanity, proof of one or more particular acts, though very strange and affording some ground for imputing insanity, will not of itself be proof sufficient to show that the acts were done under the delusions of insanity: popularly, perhaps medically, it might be said that the man must have been mad, or else he would not have done such an act; but the consequence of allowing of this to be said legally, imposes the necessity of being more cautious.

On the other hand, when you consider a man who has been admitted to be insane, or who has been found such, after investigation before a jury (though all such investigations and findings are very apt to be fallacious), proof of one or more particular acts, done after the manner of a man of sound mind, will not (if not accompanied by the application of some test) be taken as sufficient proof that the acts were done in circumstances free from insane delusions, or the influences to which persons acting under insane delusions are peculiarly liable.

The man whose case I have been considering was at

least occasionally insane, or subject to fits of insanity; such is the evidence, and so the jury found.

Occasionally, also, he was capable of well understanding business and managing affairs. If he was insane he may have enjoyed lucid intervals."

LITIGATION.

He used to say, "I consider that to check litigation by means of expense, is pernicious to the public: it may be prevented by cutting off its sources; but if they are allowed to exist, the only mode of preserving the peace of society is to allow litigation to take place, and to make it easy. The causes should never be allowed to rankle and fester in the minds of parties; the best and most prudent course is to let them go before an impartial judge, who may decide the matter in difference between them."

MASTERS IN CHANCERY.

I have already stated that Lord Langdale declared, if he got through his regular paper he would himself take references two days in the week, thereby doing a portion of the Masters' work. On it being said to him that by his doing their work they would have little to do, he said, "Don't appoint any more on vacancies, or send them into the country; for instance, I would have one at Liverpool." In his evidence on the subject before the Committee of the House of Commons "On Fees in Courts of Law and Equity" he said, "I am not sure there are not more Masters than are needed, but I am not fully prepared to recommend a considerable reduction. I incline to think that a Judge sitting out of

Court and without the attendance of counsel, might do several things which would prevent a good deal of expense in the Masters' Office; and as far as I am concerned, I have been and am perfectly ready to make the experiment."

NUMBER OF JUDGES, AND THEIR DUTIES.

He thought it would be better to have more Judges than necessary, rather than too few: and then there would be no delays of justice arising either from want of time or of Judges. Moreover, it would be no bad thing to allow each Judge one day's relaxation in the week, as their duties were, in most instances, much too burthensome to be borne for any length of time. He often said, he thought the duties of an advocate in constant practice in the Courts heavy and killing work, but they were light compared with those of a judge.

PARTY PROFLIGACY.

Remarking once on political dishonesty, he said, "The profligacy of the two parties is really very great. Look at the late cases of Canterbury and St. Albans. There was undoubted corruption in both. One had returned a Whig, the other a Tory; and as it turned out that the guilt of bribery was pretty equal in both, it was determined to compromise the matter, and leave Mr. Smythe, the Tory, to sit for Canterbury, and Lord Listowel the Whig, to sit for St. Albans. Accordingly, in each instance, the complaining counsel suddenly closed his case, and left the Committee no other option than that of declaring the sitting Member duly elected."

ANECDOTE OF CHANTREY.

Lord Langdale and Sir Francis Chantrey were once lamenting together over the want of skill exhibited in the different attempts to ornament London: "Well, Chantrey, you are a practical man," said his Lordship, "what would you do?" Chantrey, after some hesitation as to giving his opinion said,—"I'll tell your Lordship what I would do: I would collect all the statues, good, bad, and indifferent, which are now misplaced in different parts about London, and I would place them altogether in one suitable place—say Regent Street, for instance—and you may depend upon it, that with taste and knowledge in the arrangement of them, they would have an exalted effect."

POLITICS.

Before his elevation to the Bench, in politics Mr. Bickersteth was neither Whig, Tory, nor Radical, but a thorough Reformer.

Lord Lyndhurst, speaking of him says, "My first acquaintance with him originated in my canvass for the University of Cambridge, of which I was formerly a representative. I could not prevail upon him to vote for me, his liberal principles not permitting him to give his voice in favour of a Tory; and when Lord Palmerston applied to him on the same occasion he said, 'You shall certainly have my vote, as I think it very hard you should be turned out for the first honest vote you ever gave' (meaning the support to the Catholic Emancipation). The next person Lord Palmerston canvassed was the late Master Duckworth, to whom he said, 'That Mr.

Bickersteth is a very odd fellow; I can't make him out, —he is neither a Whig nor a Tory—so I suppose he must be a Radical: however, he was very civil to me.' "

He had an unconquerable objection to stand on the hustings as a candidate for parliamentary honours, and when once pressed to stand for Finsbury, he said he would as soon go on a scaffold as to the hustings in a populous district, and endure its coarseness. I have already mentioned his refusal to enter Parliament as a nominee in 1818, and his declining to stand for Mary-le-bone, when pressed to do so by a deputation from that borough.

After he was seated on the Bench, as I have already stated, he never interfered in politics, for he did not think it consistent with the office of a Judge to do so. For some time he refused the peerage, on that very account; and when he consented to take it, it was upon the full understanding that he was to go into the House independent of Ministers, and with full liberty to vote against them whenever he thought proper.

Speaking of this circumstance, he often said, "Nothing could be more straightforward and handsome than the way in which Lord Melbourne has since behaved to me in the matter, — never even insinuating any blame against me* for not taking a more decided part in favour

* Lord Langdale thought very highly of Lord Melbourne's great common sense; as well as of the kindliness of his nature. Talking of him one day, Lord Langdale observed that during his administration he had not taken a single thing for himself; and, upon one of his friends saying, "I wonder you don't reserve an earldom or a blue ribbon for yourself," Lord Melbourne replied, "Why, one need not bribe oneself, you know."

of the Ministry ; though some of his underlings have not been sparing of their censure of me on that account."

At another time he said, "The reason of the want of cordiality shown by the Whig party to me (excepting Lord Melbourne) was, that they were highly mortified at my not taking a more decided part in politics."

Though he never voted on party matters, yet he made it a rule to record his vote in those political questions which seemed to him to be of public importance, by reason of their tending to promote the welfare, freedom, or proper education of the people. Thus he went to the House of Lords, on the 19th of April, 1842, to record his protest against the Corn Bill, though he knew it was useless, but he said, "I have a very strong feeling that the food of the people ought never to be taxed, and I cannot avoid testifying my disapprobation of it;"—and I believe that on almost every occasion where such questions as before referred to have been debated, his vote will be found either in opposition to

Lord Langdale often spoke of Lord Melbourne's art of saying things in an easy off-hand way, which would give great offence from any one else. He used to be much amused at the way in which Lord Melbourne got rid of ———, who wanted to be placed upon one of the Government Commissions, and who had been urging his claims on Government. "What you say is perfectly true," said Lord Melbourne; "and I agree with every word you say, but you know that if I were to appoint you commissioner, the fellows would not sit with you, d—n them!"

Lord Langdale said, "It is not generally known that Lord Melbourne is a great theologian, and has studied theology a great deal, and is very well read in the Fathers."

the proposal, or in support of it, according as, in his opinion, the carrying of the measure, or the loss of it, would be injurious to the interests of the country.

PRESUMPTIVE EVIDENCE.

On the danger of admitting presumptive evidence of death, he was in the habit of referring to a very singular case, which happened within his own knowledge while he was on the Bench. A sum of money in Court was subject to a trust for a particular individual, for life, and after his death was to be divided between certain parties. These parties petitioned for payment of the fund to them, on the ground that the individual in question, the tenant for life, was dead. No positive evidence could be adduced of his death; but it was said that his death must be presumed, inasmuch as the evidence showed that he had gone abroad some twenty or thirty years ago, under circumstances of difficulty, and that no human being had heard any tidings of him from that day to this. This did not satisfy Lord L., and he desired the case to stand over, intimating that if further evidence could be produced to corroborate the already strong presumption, he would attend to it. Additional affidavits were accordingly filed, after the lapse of some time, and the case then appeared so strong that he made the order for division of the fund as prayed. The extraordinary portion of the case remains to be told,—the order, when drawn up according to his Lordship's directions, was carried to the proper office to be entered; and the clerk, whose duty it was to enter it, turned out to be the very individual on

whose presumed death the order for payment was made. It seems that, in early life, he had been involved in scrapes and difficulties, which led him to fly his country, and to keep his residence and career a secret from all his relatives,—that he had returned, in time, under a fictitious name to this country, where he at length obtained a situation in the office in question, but without making himself known to any one,—that he was ignorant of his right in the fund in question, and that, but for the remarkable accident just related, he would have been deprived of these rights, and the fund would have been prematurely given over to persons not then entitled to it.

PUBLIC OFFICES.

As a general rule, he used to say, that he would appoint officers to the lowest situations when they were young, and let them by experience become fitted for advancement—when they had become fitted, and had shown themselves to be deserving (but not otherwise), and a proper opportunity offered, they should have promotion.

There were, however, some cases, he said, where qualifications were required, where it is necessary to take the man who embodied them, though he might be older than you would have wished, if no other man so eligible could be found. He did not, however, approve as a general rule of any fixed or conventional qualification. A barrister of ten years' standing may be better than one of fifteen years' standing, and the only reason he could suggest to himself for Acts of Parliament insist-

ing, as they do, on a standing of fifteen years was, that in the latter case the barrister might be considered to have been longer under the eyes of the public, which had thereby the better means of judging of his character and career.

PUNCTUALITY IN SOLICITORS.

The number of solicitors to be sworn in at the opening of the Term is generally very large. A solicitor once arrived after all the rest had been sworn in, and made an excuse that he had been unavoidably detained, and that he was only half an hour too late. Lord Langdale, at last, allowed him to be sworn, but said, "Never think that it is an excuse to be only half an hour too late. Half an hour may be of the greatest consequence to you through life—being half an hour too late may possibly bring ruin to your client, and disgrace to yourself; therefore never again be half an hour too late."

While on the subject of solicitors it may be remarked, that Lord Langdale thought very highly of them as a body, though the reverse has been frequently asserted. On several occasions he spoke of them in flattering terms from the bench, and *in re* Ponder, he said, "Long observation has satisfied me that the general body of solicitors is far above the suspicion of any malpractice; but in every profession, however honourable in itself, or by the conduct of the majority of its members, individuals are to be found in whom it is not expedient, or even safe, to leave the means of fraud and oppression."

REMEDY FOR BRIBERY.

Speaking of the corruption in the borough of Sudbury, on which the Committee had reported, he said, "The only way to prevent bribery is either to make the electoral districts so large that bribery would be impossible, or to make Parliaments of very frequent occurrence." Either of these would, indeed, be a radical measure, but he thought the consequences would not be revolutionary, and that, on the contrary, people would become rather indifferent about it, and everything would go on quietly.

RETIRING PENSIONS.

Speaking on this subject, he said, "A man may become incapacitated by misfortune, not fault, from performing the duties of his office, and it would not be expedient to turn him out without provision—and if you appoint persons in the vigour of life, and they get worn out in the service, it would be proper to allow them retiring pensions; but if you appoint them when already worn out, and they last but a very short time, I am not so convinced of the necessity of giving them retiring salaries."

He thought that Judges ought to have larger retiring pensions, in comparison, than salaries, in order that when they became inefficient through age or infirmity, they might have no excuse for remaining in office for the sake of the pay. If you say that a man shall not have a retiring allowance unless he has been in the service so many years, it may lead to unpleasant con-

sequences; a man gets worn out, and he goes on in a state of inefficiency for a long time before a case for dismissal seems to be sufficiently established.

He approved of a certain portion of a man's salary being set aside for retiring pensions; it is a sort of compulsory prudence, sometimes perhaps inconvenient, but on the whole useful.

ROLLS CHAPEL.

At the rising of the Court, on the 30th June, 1845, Lord Langdale went down to the House of Lords, having heard that by the Ecclesiastical Courts Bill it was proposed to put all chapels in London, not excepting the Rolls, under the jurisdiction of the Bishop of London. This was done without Lord Langdale's knowledge; he had the greatest objection to it, on account of the Records, and he procured words to be inserted in the Bill to exempt the Rolls Chapel.

SALARIES OF THE JUDGES.

Speaking of the Law and the Judges, and other matters connected with that subject, he once said, "I am quite convinced that great mischiefs arise from overpaying the Judges and making them men of fashion, instead of leaving them that sort of dignity which would result only from their office and their learning." He said he thought they would all be better, including himself among the rest, if their salaries were only one-half what they are.

Though he was of this opinion with respect to the salaries of the Judges when employed, he was not for

diminishing the amount of their retiring allowances. On the contrary, he used to say, it would be good policy to *bribe* men to retire, as age and infirmities advanced.*

SIX CLERKS' OFFICE, AND COMPENSATION.

Speaking of the abolition of this office, he said, "When Lord Lyndhurst became Chancellor he requested four persons, of whom I was one,† to make to him such suggestion as we thought proper for the improvement of the Court of Chancery: certain suggestions were made, and produced, amongst other things, two great fruits, the abolition of the Six Clerks' Office, and the set of orders that was made in May, 1845."

A friend who called on Lord Langdale about Christmas, 1843, has informed me that he found him labouring under indisposition, and complaining that he invariably drooped when the spur of business was removed for a few days. Talking about the enormous compensations on the abolition of the Six Clerks' Office, his Lordship said, that during his late sleepless nights, he turned over in his mind a plan for having the compensations valued, and purchasing Government Annuities for them, and for that purpose transferring sufficient stock belonging to the Suitors' Fund to the Commissioners of the National Debt, Government undertaking to make good the amount transferred, to the suitors, if it should ever be

* See Lord St. Leonard's speech on this subject in the *Times* of March 6th, 1852.

† The others were Vice-Chancellor Wigram, Mr. Pemberton Leigh, and Mr. Sutton Sharpe; on the death of the latter, Mr. Turner succeeded him.

found necessary to do so; but he felt pretty well assured that out of the forty millions standing in the Suitors' Fund two millions at least would never be wanted.

WE AND I.

Lord Langdale very much objected to the use of the word *we* in writing, except in reviews, or in the leading articles of newspapers; "there," he said, "the editors and writers of the articles are generally different persons; the former revise and adopt the contributions of the latter, and consequently may without impropriety speak of *we;* but when an individual is addressing the world, whether in fiction or in fact, it is improper to deluge his work with the pompous *we*, when the proud English *I* adds double force to the phrase, and shows that the writer does not shrink from his responsibility and individuality. If *I* look more dictatorial, it always seems more earnest and straightforward than *we*." On the same ground, he used to say, "I do not like to see a man cramming his page with, the Author, or the Editor, thinks or says so and so; why not boldly say *I*, at once? it is much better to be accused of self-consciousness than indifference."

CHAPTER VIII.

THE PUBLIC RECORDS.—THEIR ANTIQUITY, IMPORTANCE AND NUMBERS. —APPOINTMENT OF VARIOUS RECORD COMMISSIONS. — THEIR MISMANAGEMENT.—HOUSE OF COMMONS COMMITTEE ON THE SUBJECT.— LORD LANGDALE TAKES TEMPORARY CHARGE OF THE RECORD BUSINESS. — THE COMMISSION SUFFERED TO EXPIRE. — THE PUBLIC RECORDS ACT PASSED.

MANY pages of this work have necessarily been devoted to the subject of Chancery Reform, in connexion with that part of Lord Langdale's career as a law reformer. I am now about to consider him as the parent of Record Reform, certainly not the most inviting or entertaining subject to the general reader, yet one that cannot be lightly passed over, as not only is the present generation deeply indebted to him for increased facilities in consulting the national muniments, but those which are to come will be benefited by his exertions and his care for their better preservation.

The Records of this country exceed those of any other kingdom in antiquity, importance, and numbers. They begin with Domesday Books, and (with the exception of those which have been lost or destroyed in the turbulent reigns of the kings of the Norman line) have been continued to the present time.

They afford not only the most pure and ample sources

of history, and the best evidences of the progress of civilization, of the growth of our institutions, and of the manners and customs of our country, but they are of great and indispensable value in the administration of justice, and the determination of all rights of property.

They are divided into several classes, such as those of the High Court of Chancery, the King's Bench, the Common Pleas, the Exchequer, the Admiralty, the State Papers, the Privy Council, &c., and, until the passing of the Public Records Act, 1 and 2 Victoria, cap. 94, which will be more particularly referred to hereafter, were dispersed in various repositories—at the Tower of London, the Rolls Chapel in Chancery Lane, the Chapter House, Westminster, the Lord Treasurer's Remembrancer's Office, and the Pipe Office, in Somerset House, the Treasuries of the King's Bench and Common Pleas at Westminster, the Rolls House, and in the Temple; the King's Remembrancer's Office, the Augmentation Office, the Exchequer of Pleas Office in Whitehall Yard, &c.: in all, more than sixty places of deposit.

The Sovereigns, the Houses of Parliament, and the Government of this country have, from very early periods, manifested a solicitude for the safety of the public records: and, at various successive periods, have prosecuted inquiries, and instituted various measures respecting them.

A royal commission was issued in July, 1800, pursuant to an address of the House of Commons, "to provide for the better arrangement, preservation, and more convenient use of the public records, which were in many offices unarranged, undescribed, and unascer-

tained; and as many of them are exposed to erasure, alteration, and embezzlement, and are lodged in buildings incommodious and insecure, it would be beneficial for the public service that the records and papers contained in many of the principal offices and repositories should be methodized, and that certain of the more ancient and valuable amongst them should be printed."

This commission printed and published several useful works, though very carelessly edited; but having neglected the most important object for which it was established, that of arranging the Records, and rendering them useful to the public, it was dissolved, and another appointed in its stead.

Without going into the subject of the mismanagement of this commission and the others which followed it, or of the vast sums of the public money which were spent by them, or of the inquiry by the Committee of the House of Commons in 1836, which took place in consequence of the misdoings of the Commission which issued in 1831, it will be necessary for the purpose of this work to state, that the Committee of the House of Commons before alluded to, recommended that the Commission should be replaced by one constituted on an entirely different principle, *viz.*, by three paid commissioners; that all the records of the country, deposited in different and widely-scattered buildings, and entrusted to a multitude of imperfectly responsible keepers, should be collected into one large edifice, or general Record Office, and intimated that the spot known as the Rolls Estate was the most eligible site for such a building to be erected on, it being one particularly recommended by

Lord Langdale, Master of the Rolls, for that purpose, and that he himself, if enabled to do so by Parliament, would willingly transfer it for that destination.

Mr. Charles Buller, the Chairman of the Committee of the House of Commons, consequently gave notice of his intention to move for leave to bring in a bill to carry into effect the principal recommendations of the Committee over which he had presided. His bill vested the entire custody of the Records in a person to be nominated by the Treasury, and removable at the pleasure of the Treasury, and it placed at once the custody of the Records in this new officer, without waiting till a general Record Office was erected.

This Bill, of course, caused much dissatisfaction and alarm among the Record Commissioners and the persons employed by them; and Lord Langdale, whilst relied on by the Treasury to assist in preparing for its adoption, was on the other hand assailed by letters innumerable from Mr. John Allen and others, urging him to oppose "these schemes for the centralization of the Records." It would be out of place to print this correspondence here, although Lord Langdale's part of it was not, like official letters in general, composed by a secretary, and only signed by the ostensible writer; they were all written with his own hand, and they abound in passages strongly marked by the impress of a master-mind. He positively refused to mix himself up in the personal disputes of the different parties; but he regarded any sudden stop being put, for want of funds, to the cleaning and repairing of the Records, as a great misfortune; and to avoid it, as the Government refused to entrust any

further sums of money to the Commissioners, he accepted the responsibility of superintending the accounts.

Meantime, the demise of King William IV., on the 20th June, 1837, and the consequent expiration of the Commission on that day six months, made it necessary that steps should be taken as to the property and business in the hands of the Commissioners; and accordingly Lord Langdale, on the 11th Dec., 1837, received an official letter from Lord John Russell (then Secretary of State for the Home Department), requesting him to "take temporary charge of the business which was intrusted to the Commissioners, and of the books, manuscripts, and public property lately under their care, adhering to the estimates which have been approved of for the Commission, up to the 31st March next." This charge Lord Langdale accepted; but finding, after a while, that nothing was done to put an end to so unsatisfactory a state of things, he felt himself obliged to "give formal notice of his intention to quit," in a letter to the Home Office, of Feb. 17, 1838.

A fresh promise was now made that something should be done; and, from some misapprehension of his motives, on the 1st March Mr. Thomas, a clerk in the State Paper office, was recommended to him as an assistant. Lord Langdale saw Mr. Thomas, and wrote that he thought him "a very fit person to be employed in any business which requires diligence and intelligence;" but he added, that his application had been misunderstood, and that unless the formation of a permanent plan was in progress, nothing else would be satisfactory to him, or useful for the service; and that therefore, but for no

other reason, he would wish to retire. With that consideration for others that ever characterised him, Lord Langdale added:—"If a plan be under consideration, and if provision be made for carrying on the service for so long after the 31st as may be required for due deliberation, and the passing of the necessary Act of Parliament, I shall be content to let things go on for that time as they do at present; and I shall require no additional assistance till the 31st instant, nor even then, unless it be determined, as I have some reason to think it is, that Mr. Cooper should not be employed after that time. If that should be the case, I dare say that Mr. Thomas would be well able to do every thing required; and, it appears to me, that, in common fairness, Mr. Cooper ought to be immediately informed of what is intended, and ought, by some intimation, to have an opportunity afforded him of retiring voluntarily if he should think fit. It is very repugnant to my feelings to keep him in ignorance of a determination so nearly affecting his interests."

Here again, though plainly enough expressed, Lord Langdale's motives and wishes were misunderstood; and on the next day an intimation that his services would not be required after the 31st March, was sent from the Home Office to Mr. Cooper, being beside couched in such a dry and offensive style as to draw from Lord Langdale the following letter, which, with its reply, I am sure it will be very gratifying to Mr. Cooper to peruse.

South Street, March 5th, 1838.

"My dear Sir,

"I hope that Lord John Russell will excuse me for expressing my regret that Mr. Cooper has been so roughly dismissed. I know not whether what has been done can be in any way modified; and I am afraid that it may be thought improper in me to interfere in any way; but considering that my letter to you, of the 3rd instant, was the immediate cause of the dismissal, I hope I may be allowed to say, that I know nothing which in my opinion makes it just to dismiss Mr. Cooper in a manner which seems to disgrace him, and that the business of the late Record Commission is not in such a state as to make the loss of the information which he possesses immaterial. I have reason to think that upon a milder intimation being conveyed to him, he would have thought it right to resign, and at the same time to offer his services, even gratuitously, till some other person had acquired the knowledge necessary for carrying on the work with facility.

All that I shall venture to add is, that if what has been done could be turned into this mode of proceeding, I should think it not only more gracious, but also, for all I know to the contrary, more just.

The returns which are preparing of the public property under the care of the late Record Commission will, I hope, be ready in the course of to-day or to-morrow. I remain, &c.,

Langdale.

S. M. Phillipps, Esq."

The following answer was immediately returned:—

H. O., March 5th, 1838.

"My dear Lord,

"Lord John Russell regrets that there is anything in the course he has taken which can be thought harsh, or as an imputation on Mr. C.'s character. Lord John had not the least idea of conveying any censure, or urging anything painful to Mr. C. He has desired me to enclose a copy of the letter sent to Mr. C., in case you have not seen it. The reason why Lord John did not make any suggestion as to a resignation was, that Mr. C. has had ample time for resigning, if that was his wish; and Lord John thought that, as the Commission is at an end, there was nothing to resign. I trust you will consider this explanation satisfactory, and you are at liberty, if you think it necessary, to show it to Mr. C.

I am, my dear Lord, yours truly,

S. M. Phillipps."

Shortly after, the sum of 5000*l.* was granted, to enable the necessary business connected with the care of the records to be carried on under Lord Langdale's direction, but "entirely disapproving of the present uncertain and provisional mode of conducting the business," which he saw was productive of much uneasiness, and even distress, to some persons engaged in the service, he ceased not to urge the preparation of some permanent plan; and at length, in June, 1838, a bill on the subject was drawn by Mr. Drinkwater

Bethune, and submitted to him; it appeared, however, very doubtful if the Government were even then seriously bent on bringing the matter to a close, and when he came to examine the bill, he found many clauses of which he disapproved. He complained of this in a letter to Sir R. M. Rolfe, the Solicitor-General, the clauses were modified, and the Bill received the Royal assent on the 14th of August, 1838.

CHAPTER IX.

LORD LANGDALE'S LABOURS TO CARRY THE RECORD ACT INTO EXECUTION.— DEPUTY RECORD-KEEPER APPOINTED. — LORD LANGDALE'S VIEWS FOR THE MANAGEMENT OF THE RECORD SERVICE.

LORD LANGDALE now found himself charged with various onerous duties, but without being provided with either the powers or the funds necessary to execute them, which obliged him to address Lord John Russell as follows:—

South Street, August 17th, 1838.

"MY LORD,

"I have the honour to address your Lordship on the subject of the Public Records Act, 1 and 2 Vict. c. 94.

I shall not for some time be able to submit to your Lordship's consideration the details of a general plan for the future management of the Records, but there are some matters connected with the subject of such immediate importance, that I hope your Lordship will excuse me for requesting your attention to them without delay.

1. Your Lordship will be aware that I cannot proceed to carry the Act into execution without first appointing a Deputy Keeper under the fifth section of the Act; and that as the Act does not fix the salary

which that officer is to receive, it will not be in my power to propose to any one to accept the office until I am informed what remuneration is to be allowed to him.

2. The Act (section 8) requires that as soon as may be after the appointment of a Deputy Keeper, a Public Record Office shall be established; and I beg leave to suggest, that a place should be appointed where there may be in regular attendance an officer competent to give information to every inquirer respecting records; to point out where they are to be found; how access is to be had to them; what, if any, fees are payable for searches and copies, &c. Such a centre of information would afford a public convenience which would be immediately and very sensibly felt; and it will become absolutely necessary during the progress of the removals which must take place before a final classification can be made.

The utility of the office would be very greatly increased if it could be established in a house fit to hold the arranged and most useful Records which are now deposited in different places remote from each other, and also fit to receive, when in proper order, such other Records as may from time to time be cleaned, repaired, and arranged, and thought proper to be there placed. A nucleus for the General Repository which is aimed at would in this manner be at once obtained, and the public would with very little delay obtain no inconsiderable part of the benefit which such General Repository is justly expected to afford.

The Rolls House in Chancery Lane is in the situation

which, of all others, would be most convenient for this purpose, and it is sufficiently large to receive probably all the Records of the class to which I refer. The rooms which might be so applied are now occupied by Queen's Bench Records of comparatively small utility, and which (with many others now dispersed in various places) might, without any inconvenience beyond the expense, be removed to the Tower. But I do not know whether the house is, as to security from fire and other circumstances, in a fit state to make it a safe and proper place of even temporary deposit for the most valuable Records; and I therefore suggest that a surveyor ought to be employed to examine the house very carefully with a view to ascertain whether it is safe, or can at a moderate expense be made so. If the Rolls House is not or cannot be made proper for this purpose, I submit to your Lordship that some other building which may be made proper ought to be provided.

3. It is of very great importance to save from destruction or embezzlement, a large quantity of Records which are now without proper protection. Amongst these are the Welsh Records, which, by the Act 11 Geo. IV. & 1 Wm. IV. c. 70, s. 27, are left in the possession of the same persons who held them at the time when that Act was passed. I have reason to believe that these Records are greatly neglected, but I have not been able to obtain any accurate information concerning them, and I beg leave to suggest that they ought to be surveyed by some competent person, for the purpose of ascertaining in what state they are, and how far it may be proper or expedient to remove them to London;

and, if so, what would be the probable expense and the best means of removing them.

These are the matters which appear to me to require the earliest attention. I forbear for the present to mention any others; and I beg the favour of your Lordship to inform me whether I may, with your Lordship's approbation, apply to the Lords of the Treasury respecting the salary of the Deputy Record-Keeper, and the expense which may be incurred by acting upon the suggestions mentioned in this letter.

I have the honour to be, your Lordship's most obedient servant,

LANGDALE.

The Right Honourable The Lord John Russell, &c."

Lord Langdale also wrote to the Lords of the Treasury, and endeavoured to ascertain their views as to the salary to be given to a Deputy Record-Keeper, and on other matters of finance; he further wrote to Lord John Russell as to the question of the expenses of carrying the Act into execution:—

South Street, August 25th, 1838.

"MY LORD,

"I have received your Lordship's letter of yesterday's date, and until I have the honour of hearing from your Lordship again, I shall abstain from taking any steps by which expense may be incurred for carrying the Public Records Act into execution.

I beg leave to observe that I have no further stated the details of a plan for the future management of

the Records than as I have mentioned some particular things which appeared to me to require immediate attention. The details of a general plan will require more consideration, and cannot be proposed without more time for obtaining information, for consulting with others, and for reflection, than has hitherto been afforded to me. If, as I incline to think, I have committed an error in requesting your Lordship's attention to some particulars before the outline at least of a general plan was presented to you, I must beg you to excuse it, and to attribute the mistake, if such it be, to my earnest desire that something which I consider to be clearly beneficial to the public should be done without delay.

I hope it may be understood that I wish neither to withdraw from any responsibility which the Act imposes on me, nor to form or execute any plan which does not meet with the approbation of your Lordship, and that I do not mean to direct anything which may occasion expense to be done without having the distinct authority of Government for the purpose. I must, therefore, take the liberty of reminding your Lordship that the 5000*l.* granted for the Record service, suffices only for the works which used to be carried on under the direction of the Commission, that it allows nothing for the expense of the Record Offices now for the first time placed under my superintendence, and nothing for the additional expense which must be occasioned by the establishment and execution of a new system. The Act itself is silent as to the expense of carrying it into execution, and the consequence is, that as to any materially useful results, it must, at least to a considerable

extent, remain a dead letter till the expense of executing it in the manner required for the public service is provided.

I respectfully submit to your Lordship that the most advisable course will be for the Government to limit an annual sum for the whole Record Service contemplated by the Act, including the works heretofore carried on by the Commission, the expense of the offices now placed under my superintendence, and the expense of establishing the new system.

In considering the sum to be allowed, regard will of course be had to the extent and importance of the work, which are greater than persons who have not minutely attended to the subject are apt to think; but whatever the sum may be, it will be my duty to see that the most of it is made for the public service; and the sum being limited by the Government, I apprehend that it would be proper for me to submit an estimate of its appropriation, either to your Lordship or to the Treasury; and if this were approved of, or modified after due consideration, the work might proceed steadily on that plan, until experience should suggest improvements.

If this mode of proceeding should be approved by your Lordship, I shall be content to suspend any active proceedings until it is determined what sum is to be provided for this service. If any other course should appear more convenient to your Lordship, I shall willingly use my best endeavours to act according to your Lordship's views.

I have the honour to be, my Lord, your Lordship's most obedient servant, LANGDALE."

It was not, however, until October 23rd, 1838, that the Lords of the Treasury gave an answer, fixing the appropriation of the sum of 1250*l.*, which still remained of the grant of 5000*l.*, and stating that they considered 600*l.* a year, to be increased to 700*l.* after five years' service, and to 800*l.* after ten years, a suitable salary for the Deputy Record-Keeper. Sir Francis Palgrave, the Keeper at the Chapter House, whose office was to be abolished, was the person chosen for the office. After some difficulty on the score of compensation for his services under the Record Commission, which the Treasury refused to allow, and which entailed a heavy correspondence on Lord Langdale, Sir Francis was admitted to the office, Dec. 14th, 1838.

About the same time, although an attempt had previously been made to withdraw him from his temporary employment, Mr. Thomas was appointed Secretary of the Records, in consequence of the warm recommendation of Lord Langdale.

Soon after the nomination of the Deputy Keeper, and before the establishment of the new office, Lord Langdale addressed the following letter to Lord John Russell, then Secretary of State for the Home Department, in which he submitted his views for the management of the Public Records.

South Street, Jan. 7th, 1839.

"My Lord,

"1. Having consulted Sir Francis Palgrave, the Deputy Keeper of the Records, and received his advice and assistance as to the measures which ought to be

adopted for the future management of the Records which are placed under my authority by the statute 1 & 2 Vic. c. 94, I have now the honour to lay before your Lordship my views upon the subject.

2. I do not trouble your Lordship with any description of the Records, or of the condition in which they now are, but assuming that the information afforded by the Reports and documents which have been laid before Parliament, sufficiently prove the necessity of adopting some such measures as are now proposed, I proceed at once to the consideration of what ought to be done.

3. The Records have justly been called the Muniments of the Kingdom, and the People's Evidences ; and they ought to be kept and managed under such arrangements as may afford to the public the greatest facility of using them that is consistent with their safety. The public ought to have access to them for the purpose of easily obtaining information upon the subjects to which the Records relate, and ought to be enabled easily to obtain authentic copies of all documents which can be adduced as evidence, in the establishment or defence of rights which are at issue, in the course of judicial and Parliamentary proceedings. And, as to all the Records to which recourse may be required for the due transaction of the business of the courts of law, or of the public offices, such a plan of management ought to be adopted as may afford every practicable facility for the transaction of the business in the course of which they are required.

4. The Select Committee of the House of Commons on the Record Commission, by their Report, made in August, 1836, p. 39, and the late Commissioners, by

their Report to the late King, dated in February, 1837, pp. 13, 14, have respectively recommended that a new edifice should be erected for the reception of the Records. And I beg leave to state to your Lordship, that, after the most careful consideration, it appears to me, that, for the purpose of keeping the Records safely, and managing them effectually for the public service, it is necessary to provide a General Repository, consisting of a fire-proof building, sufficiently extensive, and in a central and convenient situation. With such a building, all the Records may be arranged in a regular and systematic order; the plan of management may be consistent and uniform, the number of officers required may be reduced to the lowest amount, the works to be performed may be carried on under the most effective inspection, and public convenience and economy would be equally consulted. Without such a building, the Records must remain in several different places of deposit; and many of the inconveniences now justly complained of cannot be removed.

5. I therefore submit to your Lordship that a General Repository for Records ought to be provided, under the 7th section of the Act, without any unnecessary delay. The Rolls Estate affords a most convenient situation for the purpose, and is, also, the most convenient situation for the offices which are now wanting for the different courts of justice: and it is of very great importance to have the judicial Records contiguous to the law offices.

6. As a considerable time must elapse before the General Repository can be prepared and fitted up, I do not trouble your Lordship with any details of the plan

of management which ought to be adopted after the building shall be erected; but I have very carefully considered the subject with reference to the provisions which ought to be made for the intermediate care and management of the Records.

7. The objects of such intermediate care and management are,—1. To secure, as far as possible, the safety of the Records. 2. To adopt such arrangements as will, to the greatest practicable extent, facilitate the ultimate classification of the Records in the General Repository, when provided. 3. To afford to the public, as soon as possible, all the benefits which, prior to the establishment of a General Repository, can be derived from a simple and uniform plan of management.

8. When it is considered that the London Records, which are specifically mentioned in the Act, are, exclusively of minor places of deposit, dispersed in large collections in the Tower of London, in Chancery-lane, in Lincoln's-inn and the Temple, in Somerset-house, in Carlton-ride, Whitehall-yard, Spring-gardens, New Palace-yard, and the Chapter-house; that Records of the same kind, and forming different parts of the same series, are sometimes found in two or more of these places; that in some of them there is no regular attendance of any officer, that different regulations prevail in the several offices, and that there is no general repertory or catalogue of the Records,—it may easily be seen what difficulties are opposed to any search for documents, and particularly to the search for such as may not be in the most ordinary and frequented route of inquiry.

9. The measures which I have to propose are suggested with the views,—1. Of affording to the public a great additional facility in the use of the Records, and—2. Of preparing the Records for their reception in the General Repository, when provided.

10. And with these views I have to submit to your Lordship that, in pursuance of the 8th section of the Act, a Public Record Office ought to be immediately established at the Rolls House, and that the Deputy Keeper of the Records should attend there, and have such competent assistance as will secure the constant attendance, during office hours, of some officer who shall be enabled to give to any applicant the information which he may require respecting any Records comprised in the Act; to say where the Records are, if they are known to exist, or can be found referred to in any existing calendar or index; and if it be doubtful whether any Records supplying the required information exist or not, to cause the proper searches to be made in the proper places.

11. For the purpose of securing or facilitating the communication of all the information thus sought to be made available, it may be necessary in some cases to cause some of the existing calendars and indexes to be removed to the Public Record Office, and in other cases to cause copies of the existing indexes and calendars to be made, so that one copy may be at the Public Record Office, and another copy at the place where the Records are kept. The propriety of adopting one or other of these courses will depend in each case upon considerations of convenience and expense; the principle being to

consult the public convenience to the utmost extent that the pecuniary means allowed will permit.

12. There are rooms in the Rolls House, which, with very little trouble and expense, might be made available for the Public Record Office, and afford the necessary accommodation to the Deputy Keeper of the Records, and the other officers or clerks who ought to be there; and the propriety, as well as the facility, of establishing the office there for the present, are so obvious, that I have already directed preparation to be made for the purpose. Whether the building can be adapted to the more extensive objects to which I am about to advert, may be doubtful; but, if it can, very great advantages for the Record service may be very soon obtained.

13. The Rolls Chapel, which is immediately adjoining to the Rolls House, is extremely crowded with the charter rolls, patent rolls, close rolls, and other Chancery Records, continued in a regular series from the beginning of the reign of King Richard III. These are the Records which are of the greatest utility, and are most frequently resorted to by the public. The earlier series of the like Records are now in the Tower of London. The rooms in the Rolls House are spacious, and are now principally occupied by Records belonging to the Court of Queen's Bench from the reign of King Henry VI. down to the fourth year of the reign of his late Majesty King George IV.; the earlier series of the like Records are in the Chapter-House at Westminster; the subsequent series are partly in the Treasury of the Court of Queen's Bench at Westminster, and partly in the office of the Court, now in the Temple.

14. The earlier series of the Queen's Bench Records, which are in the Rolls House, occupy a very large space, and are comparatively but little resorted to by the public; and if a portion of them were removed to the Tower of London, where there is room to receive them, a very considerable space in the Rolls House would be obtained; and in the Rolls Yard there are two large rooms, which are vacant, and were formerly used as the Cursitor's Office, abolished by the statute 5 & 6 Wm. IV. c. 82.

15. The space thus obtained would, if the buildings can be made properly secure, in the first place afford the necessary relief to the Rolls Chapel, and afterwards be most conveniently occupied by the early series of the Chancery Records, now in the Tower of London, and by the several Records of various classes which have been repaired, arranged, and placed in boxes, or bound, under the direction of the late Record Commission or otherwise, and are now dispersed in various offices.

16. Before it can be determined whether the design is practicable, it will be necessary to ascertain—1st. Whether the Rolls House and the late Cursitor's Office are, or can be, at a moderate expense, made fit for the accommodation of the Records proposed to be placed there. 2ndly. Whether the removal of the older Queen's Bench Records to the Tower would be satisfactory to the Court of Queen's Bench; and, 3rdly. Whether the temporary occupation of the Rolls House and the late Cursitor's Office for the above purposes would materially interfere with the erection of the general repository on the Rolls estate. I have no reason to think

that the circumstances here noticed would occasion any considerable difficulty, but I cannot speak with confidence, as I have not thought fit to make all the inquiries which may be necessary, until I am informed whether your Lordship approves of the general outline of the scheme which I am now offering to your consideration.

17. It is undoubtedly an objection that the expense of moving the Queen's Bench Records to the Tower would be incurred, and that when the General Record Repository shall be provided, there may be the expense of bringing them back; but the advantages to be derived from the arrangement which I have proposed are very great, and are such as to make it appear to me clearly beneficial to the public to incur that expense; and I only mention the subject to show that it has not been neglected.

18. If, for any reason, the Rolls House cannot be made use of as a temporary place of deposit for such Records as I have proposed to place there, it will be expedient to provide some other convenient place for the same purpose.

19. At the same time that the Public Record Office is established, it will be necessary to provide a particular system of management, and a regular attendance at the Rolls Chapel, the Tower, the Chapter House, and such other subsisting offices or places of deposit as cannot be discontinued until the General Record Repository shall be erected.

20. The contents of every Record Repository ought to be accurately ascertained; and for that purpose com-

plete chronological repertories, inventories, and catalogues of the Records should be formed. Calendars, or tables of contents, and alphabetical indexes to the whole, should also be prepared; and it will be important to proceed with as much effect as the means allowed will permit, with the work of cleaning, sorting, binding, and placing in boxes. Some part of the work must be performed in the places where the Records happen to be; but it may probably be found more convenient and safe, and in the end less expensive, to provide a workshop, in which the work of cleaning, repairing, sorting, and binding, may be performed under proper inspection, and without allowing the Records to be at any time out of the custody of the proper officers. The particular work to be done in each office or place should be directed by the Deputy Record-Keeper, and, if necessary, be from time to time inspected during its progress by an officer appointed for that purpose. Periodical accounts of the work done should be regularly returned to the Deputy Keeper at the Record Office; and, at convenient periods, and as space may be afforded, the arranged Records may, if proper arrangments for that purpose can be made, be removed to the Record Office.

21. I submit to your Lordship that, so far as it may be practicable, all work to be done, and all materials and stationery to be supplied for the Record service, should be done or supplied by Government officers, or from Government offices, charging, if your Lordship should please so to direct, the proper costs and prices to the Record service, so that the total expense may be known, and all interference of private interest be prevented.

22. I further submit to your Lordship that all officers ought to be considered as attached to the General Record Office, and engaged generally in the Record service, and liable to be employed in such particular services as the Deputy Record-Keeper, with the sanction of the Master of the Rolls, may appoint. It will, of course, be desirable, and even necessary, that every officer should be employed in the peculiar service to which his abilities, experience, and character are best adapted; and that every one should be continued in the employment to which he appeared to be best suited. On the other hand, as it cannot at first be known to what particular parts of the service individuals will be best adapted, or what would be the best distribution of employment, and it is necessary to guard against an inconvenience to which the Record service is (in the present state of the Records) liable to be peculiarly exposed, no officer ought to be allowed to consider himself as permanently attached or confined to a particular duty in a particular place, but ought to hold himself in readiness, when the service requires it, to perform any duty which may be directed by competent authority.

23. I have further to submit to your Lordship, as necessary to the promotion of steadiness and zeal in the service, and the prevention of all conflict between the private interest and the public duty of the officers, that every officer should, during the prescribed official hours, be exclusively employed in the service, and not be permitted to give part of his time to the service, and other parts to other employment. That, in all cases in which it may be found useful and practicable, the remuneration

of the clerks and others engaged in the service, should consist partly of salary and partly of reward for task-work and regularity of attendance, within such limits as may be approved by the Treasury: and that no Record officer shall be allowed to act as a private Record agent in making or conducting searches, or procuring office-copies, or otherwise, for his own emolument.

24. As great inconvenience and great additional expense is occasioned by the number of places in which the Records are now deposited, it is highly desirable to diminish them as much as possible; and I submit to your Lordship, that, whilst the General Repository is preparing, and as room can be afforded, the Records now in the minor places of deposit, ought to be removed therefrom, and added to the larger collections. At present the Tower alone affords any considerable space; but, if the General Record Office can be adapted to the reception of the arranged Records, space may also be found in other places, to such an extent as to make it unnecessary to use some of the minor places of deposit at all. In this way expense would be saved, to an amount far exceeding the expense of removing the Records in the way proposed.

25. In everything which may be done, it will be necessary to keep in view the final arrangement of the Records upon a systematic plan, and to take care that none of the operations undertaken shall in any way interfere with the legal validity of the Records, or materially interrupt the use of them.

26. The final arrangement of the Records cannot be determined upon without great consideration. A very

useful attempt to form a systematic arrangement was made by Mr. Luders, under the direction of the Committee of the House of Commons, in 1800, and is found in Table I, annexed to the Second Report of the Committee. Since that Table was formed, a very great additional knowledge of Records has been obtained, but that knowledge has not been applied to the correction or improvement of the Table; and it appears to me to be necessary to reconsider the subject in its most minute details, and to make available all the knowledge now possessed, and all the skill and experience of the Record officers engaged in the service, to frame a systematic arrangement as full and accurate as may be, and to make all calendars preparing in the several offices, as well as all removals, subservient to the ultimate placing of the Records together, according to such arrangement, in the General Repository when provided.

27. And, in the meantime, to prevent any confusion arising from intermediate changes, it will be necessary to make regular entries of every removal in a transfer-book, to be kept for the purpose at the General Office, and also in another book to be kept at every place from or to which any Records may be removed. The Act has placed the Chancery Records in the custody of the Master of the Rolls for the purposes of the Act, but no others can be brought into his custody without a warrant countersigned by the Lord Chancellor; and the Records in the custody of the Master of the Rolls cannot be removed from one place to another without his warrant: and it may be expedient that, before any Records are removed from the places of deposit in which they were when

the Act passed, they should be stamped with a stamp denoting the office to which they then belonged. By means of such stamps, the warrants for removal, the receipts given for the Records when delivered according to the warrants, and the entries in the transfer-books, a complete account of the custody of the Records will be preserved, and no difficulty will arise either as to their authenticity or as to the places where they are to be found at any particular time.

28. The Records of the abolished Courts in Wales are amongst those which require the earliest attention. Under the statute 11 Geo. IV. & 1 Wm. IV. c. 70, they were left in the possession of the persons in whose custody they were when the Act passed. It is necessary to ascertain in what state they now are, and how far it is proper or expedient to remove them to London: and, at all events, to provide for their safe custody under proper regulations.

29. In my letter to your Lordship, dated the 17th August, 1838, I had the honour to suggest to your Lordship the propriety of having the Welsh Records surveyed by some competent person, for the purposes then mentioned; and the expediency of adopting the suggestion appears to me to be greatly strengthened by the correspondence relating to one part of the Welsh Records communicated to me by your Lordship's directions on the 10th day of December, 1838.

30. Attention is also required to the Records of Durham and Ely.

31. In order that the business may be duly controlled and regularly transacted, journals and accounts of all

proceedings should be kept, in such a form as to make a strict superintendence possible, and even easy; and for this purpose attendance-books and journals must be kept in each office or place of deposit; every person charged with the execution of any duty should keep a strict account of all his proceedings, and regularly return a copy thereof to the General Office; and at the General Office should be kept books in which the accounts of all works and transactions are to be consolidated and methodized, so that the exact state of the proceedings, and the state of the expenditure, may be at all times known or ascertainable upon a very short investigation; and these books are, from time to time, to be laid before the Master of the Rolls, so as to enable him to know at all times what is the state of the accounts, what progress has been made in the works, and what has been the conduct of every individual engaged in the service.

32. In order that the journals and minutes of the proceedings of the office may be duly entered, that all accounts may be duly and regularly kept and methodized, that such fees as are to be continued should be duly collected and accounted for, and for the making of small cash payments and various other services, it will be necessary to appoint an officer who, under the name of Secretary, or some other appropriate name, may perform the duties of Secretary, Book-keeper, and Cashier. The duties to be imposed on this officer are of a confidential nature, and of great importance.

33. And in order that the Records may be cleaned, repaired, sorted, covered, ticketed, and bound, or placed in boxes on an uniform and systematic plan, and as

economically as may be, and that all removals may be made with due care and attention, it will be expedient to charge an Assistant Record-Keeper, or one of the superior officers of the establishment, with the duty of superintending all such operations under the directions of the Deputy Record-Keeper.

34. I do not at present make any suggestion to your Lordship as to the amount of money which ought to be allowed for this service. The extent of the work required to make the Records properly accessible to the public is extremely great, and any sum that may be allowed may be usefully expended upon it. It will be for the Government to consider what can be properly afforded for this department; but I submit to your Lordship, that whatever sums may be allowed, ought to be carried to an account to be called "The Public Records Account," at the Bank of England, and that the Deputy Record-Keeper ought to be authorized to draw upon that account by his drafts, countersigned by the Secretary; and that, as far as convenience will permit, all payments ought to be made by means of such drafts.

35. It does not on this occasion appear to me to be necessary to trouble your Lordship, by entering into any further details. It must, I conceive, be obvious that, by acting upon the above suggestions, the use of the Public Records would be very greatly facilitated; and that, during the preparation of the General Repository, and prior to its completion, very substantial benefits would be secured to the public, without incurring any great additional expense; and that, at the same time, great progress would be made in preparing the Records

for their arrangement in the General Repository when provided.

36. In order that authentic copies of Records may be prepared for the purposes of evidence, I shall, under the 11th section of the Act, give directions for the making of a seal; but, until Assistant Keepers shall be appointed, the Deputy Keeper is the only officer authorized to certify the copies; and the public cannot have the benefit of the 13th clause, without very materially interfering with the other duties of the Deputy.

37. If your Lordship should approve of the suggestion which I have had the honour to submit to your consideration, it will, I presume, be proper to form an estimate of the expense which will be incurred; and as this will, in a great measure, depend upon the salaries which may be allowed to the different officers who may be employed, and the extent of the annual work which your Lordship may be disposed to authorise, I shall not be able to direct such estimate to be framed without some further communication with your Lordship or the Treasury on the subject; and, for the purpose of affording time for the requisite consideration and preparation, I submit to your Lordship that it would be proper to continue all the officers on their present footing till the 31st of March. I shall be prepared to submit to your Lordship an estimate of the appropriation of the sum of 1250*l.* (the residue of the grant of 5000*l.* for the current year) to the service for that time; and I submit to your Lordship that, from the end of the present quarter, the business of the Records should be conducted under the provisions of the Act.

38. In the meantime I have the honour to propose—

1. That such rooms as can for the present be spared in the Rolls House, be prepared for the accommodation of Sir F. Palgrave, the Deputy Record-Keeper, and for Mr. Thomas, who, with the approbation of the Treasury, acts provisionally as Secretary.
2. That the Rolls House and the late Cursitor's Office be surveyed, for the purpose of ascertaining whether they are proper places for the reception of such Records as have been before referred to as proper to be removed thither.
3. That the general plan for the future management of the Records, when the same shall have been approved by your Lordship, may be communicated to the several officers of Records who have such interests in their offices as may entitle them to compensation, for the purpose of enabling them to consider what course it may be expedient for them to adopt, or what compensations they may claim in consequence of the great changes which will be made in their situations.
4. That a Secretary and a competent number of Assistant Record-Keepers and Clerks may be appointed by the Treasury, pursuant to the 6th and 18th clauses of the Act.

I have, &c.

LANGDALE."

CHAPTER X.

STATE OF THE RECORD SERVICE BEFORE THE PASSING OF THE ACT.—ENORMOUS FEES.—DEFECTIVE CALENDAR.—LORD LANGDALE REDUCES THE FEES, AND FORWARDS THE FORMATION OF NEW CALENDARS.—GENERAL INDEX IN PROGRESS.—DIFFICULTIES AND OBSTRUCTIONS.

To properly understand the foregoing letter it is necessary to take a cursory view of the actual state of the Public Records anterior to the passing of the Act of the 14th of August, 1838; and of the expenses attendant on searches and copies of the national muniments for legal or historical purposes.

The Public Records were dispersed in upwards of sixty different places of deposit, all more or less under different management, and having as many various rules and regulations for their governance, as well as for the opening and closing of the Repositories.

Some of the officers were paid by a salary from the Government, and by fees from the applicants; others were remunerated by fees only; consequently, this tax upon litigation and literature was constantly the cause of complaint and indignation. The fees were different in all offices; exorbitant in most, and in some, amounting almost to a denial of justice to the poor litigant, while the literary student was shut out from the use of Records, except under a favour to himself from the

heads of the office, or an outlay of money he could ill afford. The fees for searches varied from 1*s.* to 5*l.* 5*s.* per diem; for inspections of single documents, from 1*s.* up to 16*s.* 8*d.*; and for copies from 6*d.* up to 3*s.* 6*d.* per folio; and the number, even of words in a folio differed; in most offices it was seventy-two words, in a few seventy-eight, and in others ninety.

There cannot be a doubt that the payment of fees and douceurs leads to the worst results. The necessities of some, and the cupidity of others, are thereby (as it were) legally indulged. Obstructions, denials, and extortions are all more or less encouraged by the demand of fees. And here let me again state, (because it has been elsewhere otherwise alleged,) that Lord Langdale was an opponent to the payment of fees; he solemnly declared before a Select Committee of the House of Commons, that "if he might express a wish, it should be, not only that no officers should be interested in any fee, but that no fee at all should be received; for fees are in the nature of taxes." He thought them a temptation to dishonesty, and an improper mode of encouraging industry; that they led to great abuses, and that no power could be found to prevent extortion in some shape or other if you once allowed officers to demand or to accept money for their own use; for even good men have their weak moments, and under some specious pretext, will be tempted to take something different, or something more than they ought to take; something in the way of gratuity, or civility, or expedition-money, at first given as a token of gratitude, and accepted under a consciousness of desert, but in time settled into a

claim, or a hint not to be disregarded if prompt service be required.

I have already stated the varying sums demanded for searches, inspections, and copies of records; but it is necessary to say something more, to show how the demand of fees operated as a denial of justice, and a bar to the circulation of historical knowledge, so that suitors and the public may know how much they are indebted to Lord Langdale in this particular alone; and I am the more anxious to do this, because an unjust report has been bruited about that all fees for the consultation of Records would have been removed had it not been for his opposition to such a measure.

The calendars and indexes to the Records, to which the public had access upon the payment of the fees mentioned above, were in a most imperfect state; they did not refer to one-fiftieth part of the contents of the repository to which they respectively belonged; therefore calling them either calendars or indexes was a misnomer; they were generally nothing more than memoranda made by some diligent clerks or antiquaries for their own especial use, and left as a species of heir-loom to the office. The imperfections and deficiencies of these calendars induced some officials to construct new, or to amend the old ones, but to these the public had no access whatever; they were private property;* and

* An exception must be made in favour of Mr. Petrie, Keeper of the Records in the Tower of London, who corrected with his own hand the printed Calendars to the Rolls of John, and commenced a new Calendar to the Patent Rolls of Henry the Third, which was nearly completed at the time of his resignation. Mr. Lysons, Mr. Petrie's predecessor in the keepership of the Tower Records, ought

a search for any particular document or grant was only made by the owner of the calendar himself, upon the payment of another fee, ranging in amount from two to ten guineas.

The search was only the first step in the scale of Fee-taking; the entry in the calendar, whether belonging to the office or to the officer, was generally so meagre or doubtful (often worded for the purpose of misleading, or, at any rate, leaving the meaning so extremely equivocal as to render a sight of the document itself essential for the removal of doubt), as to whet the inclination of the searcher, and to tempt him to incur the further expense of an inspection; whereas, had the entry in the calendar been explicit and clear, the applicant would have known at once whether it was necessary for him to consult it, or not; but such a calendar would have been against the interest of the proprietor of the index, who was of course also the recipient of the fees for inspection. It is needless to go into examples; hundreds could be adduced at a breath.

The notice in the calendar or index then produced the second fee, *viz.*, that of inspection, or taking down the Record, which ranged from 1*s.* up to 16*s.* 8*d.*; and this was exacted whether the entry was of use or not. But what made the case the harder was, that supposing there was more than one entry on the Roll the applicant had paid his fee for taking down, he would have to pay the same fee for every entry on the Roll he looked at, even

also to be excepted, he having made new calendars to the Chancery Proceedings of the time of Queen Elizabeth.

if they amounted to a hundred, unless at starting he took the precaution (if he had a knowledge of the fact) to state that he would make a composition to search the Roll for 1*l.* 1*s.*; and even then, if he found anything not immediately connected with his present inquiry, he was not allowed to notice it, without paying an additional fee. Supposing, however, that the entry on the Record which the applicant had paid for inspecting, did bear upon the subject of inquiry, the unfortunate fee-payer was not even allowed to make any extract from it, beyond the names of the parties mentioned in the document, and its date; though he might only want a paragraph of twenty words, as a link in his chain of evidence or reasoning, he was compelled to take a copy of the whole, even though at a cost of a hundred guineas, or more; occasionally, however, and then as a matter of favour, hardly of right, if the document were of a particular nature, a parcel copy or extract might be had, if the cost of the whole was beyond ten pounds; but nothing under that sum would come under that rule of favour or exemption.

The inexperienced reader may think the fee-extorting system by this time had done its worst; that the unfortunate suitor or inquirer had paid enough for his curiosity or privilege in consulting the national muniments; for the preservation of which he had already contributed his quota in the shape of taxes, towards the salaries of their keepers and clerks. But he will be mistaken. In all those cases which occurred before the Houses of Lords and Commons, or Committees of the same, the original Records were always brought up by Warrant of the

Speaker, or the Chairman of Privileges. The dignity of Parliament would not be put off with such office-copies as satisfied the Courts of Justice below; they must see the originals, as well as have copies of them; and for every document so brought before Parliament a fee of 2*l.* 2*s.* per diem was demanded; and no diminution of this fee was ever for a moment thought of or listened to, even if the number of documents amounted to a hundred: two guineas a day were demanded and received for each —thus in peerage cases, where there were seldom less than an hundred instruments necessary to prove a pedigree, two guineas were paid every day for each document taken out of the office to Parliament; and sometimes these documents went up for three or four days together, in case they might be required. A thousand guineas spent in fees only for producing records before Parliament was no uncommon sum paid; besides the other expenses of searches, inspections, and office-copies. In some special cases it was also necessary for the inferior Courts to see the original records, and then the same fees were also demanded and paid.

Men interested in the recovery of some great right, or in the protection of their property, were compelled to pay these extortionate demands; but the historian, whether general or local, and the poor author, were, of course, debarred (except in some few instances where permission was granted as a favour) from consulting the national archives.

And here I would remark, that I do not intend to cast the slightest reflection upon the late keepers or clerks who received the fees; for, in almost every

individual instance, they were gentlemen, men of honour and the strictest probity, who would have scorned an injustice or extortion, and who would gladly have changed the system, and taken salaries in lieu of fees. But it is against the principle of fees, as a tax, that I have made my remarks, because Lord Langdale, if not the annihilator of this abuse, was certainly the great moderator of it. He held as a general rule that no fee whatever ought to be taken for the consultation of the public muniments; but as he was advised by many persons, whose opinions were entitled to great respect, that some fee was necessary to be taken, lest the Records should be injured by indiscriminate use, he was induced, against his inclination, to consent to the measure of taking fees for the protection of the Records; but when he was urged to make an exception in favour of literary applicants, he refused, on the ground that, if any favour ought to be shown to either party, it should be to the suitor who was compelled to go to law, either for the recovery or protection of his rights or property; whereas the author published his work either for his own profit or for reputation: in either of which cases he was better off than the suitor. One was a voluntary act, the other a compulsory one; but Lord Langdale always said, that as far as he was concerned, he would have the public records as accessible to all parties as the British Museum,* no fee or tax whatever paid for consulting

* Lord Langdale fully carried out this principle, sometimes, it must be owned, to the dissatisfaction of his officers. One of the Assistant Record-Keepers had discovered the accounts of the ex-

them; but as long as it was considered necessary to protect the Records by a tax he would not make exception in favour of any class. And he laid it down as a principle to his officers in the Record service, and reported his opinion on the subject to the Government several times, that the fees taken for the consultation of the public muniments were not to be regarded as sources of revenue, but entirely as protection; and in framing the new scale of fees he was actuated by that principle, and by that principle only.

The fee for using the calendars and indexes, he made only 1*s.* per week; for the inspection of a roll or bundle, no matter how large or numerous the contents, 1*s.* per week, with the privilege of copying the whole contents in pencil (ink being forbidden for fear of accidents); and if the number of rolls or bundles exceeded five, the Assistant Keeper had the authority to reduce the fee to 5*s.*;

penses incurred in erecting the crosses for King Edward's Queen at the different places where her body rested, and which it had been supposed were erected by Edward out of affection for her memory, but the accounts showed that they were paid for by the Queen's own executors; so that the story of King Edward's conjugal love is, so far, without foundation. The assistant-keeper intended to print the account of his discovery; but, in the meantime, some one else having heard of it, applied to him for a copy of the record. Upon which the assistant-keeper requested Lord Langdale to authorize him not to give any copy until he had published the document. His Lordship, however, told him that was impossible, and though it was very hard that the oyster should be taken out of his mouth just as he was about to swallow it, yet he must recollect that it was the duty of assistant-keepers to let the public have the benefit of every record in their office, and, further, to facilitate in every way the searching for, and taking copies of, the national documents.

so that the searcher might look at five hundred rolls or documents, if he had time, for 5*s.* a-week, and copy or make abstracts of the whole of them into the bargain. The fee for copies was reduced to 6*d.* for ninety words, about half the sum charged by a law-stationer for the same species of work.

When it was necessary to produce Records before Parliament, or any of the Courts, parties, for the sum of 2*l.* 2*s.* per diem, were entitled to take a thousand if they chose: there was no limit to their number.

Furthermore, no gratuity or reward was suffered to be taken by any officer or attendant, under any pretence whatever; and every officer is bound to impart his knowledge and advice to all parties seeking or needing them.

So that to Lord Langdale the public is entirely indebted for the moderation, if not the removal, of the hardships and difficulties formerly attendant on the consultation of the Public Records.

The present Master of the Rolls has, however, conceded one point about which Lord Langdale hesitated; he has allowed literary applicants to consult the Records gratuitously, under certain restrictions. And here I may, perhaps, without egotism or impertinence, be allowed to speak of myself: I have ever been, and still am, an opponent to the payment of fees for the consultation of records, and on several occasions I urged the subject on Lord Langdale's consideration, but he invariably answered,—"I cannot do it without the consent of Parliament. Like yourself, I am an opponent to all fees; but it having been thought necessary, for the protection of the Records, to tax their

consultation, I placed the smallest fee I could for that purpose ; and I was required by the Act of Parliament to lay the scale before Parliament for its approval ; and Parliament having approved of the scale I made, I cannot alter it without the sanction of Parliament; but I shall be happy to obtain that, if you can make out a sufficient case of necessity." And the very last interview I had with my lamented master, I told him that a member of the Bar, Mr. F. A. Carrington, and myself, had drawn up a petition to him on the subject, but had been prevented from presenting it solely on account of his ill health, not wishing to plague him with more matters than it was necessary to bring before him. He read the petition which had been drawn up by Mr. Carrington, and said,—" It is now too late for me to act in the business, but you know my opinion; if my successor feel inclined to act upon the petition, he will lay the matter before Parliament, and I will give it my support."

The reduction of fees is not the only subject for which the public are indebted to Lord Langdale. For increased and regular hours of attendance at all the offices; the formation of new calendars and repertories; the better arrangement of, and access to, the Records: in fact, for every advantage that the public are now reaping and have reaped since the passing of the Public Record Act, and for some time previously, they are indebted to him, and to him alone.

To give an account of the complicated proceedings in bringing matters to their present state, and of the minute details connected therewith, would be foreign to

the purposes of this work. It would require more than one volume to be devoted to those subjects alone,* and after all, it would not be interesting to the general reader, though highly so to those who have been affected by the new arrangements.

Lord Langdale, in his letter to Lord John Russell, dated 7th Jan. 1839, submitting his views for the management of the Records (*ante*, page 126), states that, "in everything which may be done, it will be necessary to keep in view the final arrangement of the Records upon a systematic plan. With this object, Mr. Thomas, the Secretary of the service, has been for some time preparing a General Reference Book to the Public Records, containing an account of all the classes and series, with a proposed plan of arrangement, upon which he has bestowed considerable labour and pains." When published, his book will afford the best evidence of what has been done under the direction and superintendence of Lord Langdale. It is intended to notice the various classes of Records, arranged under the respective courts and departments to which they belong; and each being under alphabetical arrangement, the searcher is referred to the same head in each Court; but lest any difficulty should arise by this necessary analytical arrangement, a general alphabetical index is also given, so as to bring into one focus the whole of the information on a particular subject.

The Record Act, as I have stated, passed on the 14th

* It is my intention to write a History of the Public Records of the Realm, in which I shall have a better opportunity of doing justice to Lord Langdale, than I am able to do in these pages.

of August, 1838, and full two years were employed in forming the establishment, and in making the necessary preparations for carrying the Act into practical execution.

It is quite impossible for the Government or the public to conceive the amount of labour and attention which Lord Langdale bestowed during that period upon the Public Muniments. The letters that have been alluded to will show something, but not a tithe of what he went through. There were obstructions to be removed, jealousies to be soothed, and avarice to be checked. Applications for employment poured in upon him from nobles who had friends to serve, from Members of Parliament who had obligations to repay, and from friends who had relations to provide for. There was justice to be done to those already in office, and there were not wanting some who endeavoured to poison the mind of the judge who was to sit upon the claims and capacities of fellow-labourers; but what added most to his Lordship's annoyance and vexation, was hostility and wrongheadedness, where he expected assistance and enlightenment. But he was not to be turned from his purpose; he pursued his way steadily and cautiously, easing when he could not cure, healing when the disease was not quite hopeless, and reforming with a firmness and dignity which made the disobedient tremble and the guilty quail. He encouraged by a smile and a benignant look those who tried to please; and nothing but unflinching firmness tempered by urbanity enabled him to get over the difficulties he had to encounter at every step. Well

might the Lords of the Treasury, in returning him thanks, say, that "not only did the Government, but the public also, owe him many obligations for his able plans and management of the Record Service, and for the labour and attention which, in the midst of his important duties as Master of the Rolls, he had devoted to the accounts connected with them."

Lord Langdale taught Mr. Thomas, the able and intelligent Secretary to the Record Service, how to proceed to make himself master of the affairs over which he was placed; and he particularly charged him not to take too much responsibility on himself; but to look to him for support on all occasions of doubt and difficulty; and when his Lordship had himself any doubt, or required information, he invariably called in the advice of the Deputy Keeper and Assistant Keepers of Records; sometimes having private interviews with each separately, at other times, collectively, and commonly requiring their individual opinions in writing upon the subject under his consideration. Those letters which he considered necessary for him to answer, he wrote out in his own hand, and the drafts are still preserved in the Public Record Office; those letters that were written by the Secretary, Deputy Keeper, or an Assistant Keeper, were all carefully studied over; and in almost every instance he made alterations and improvements either in the style or composition.

Mr. Thomas, the Secretary, had immediate access, when he required, to see his Lordship, either before going into Court, or at its rising. "I have," writes Mr. Thomas, "frequently been waiting in the ante-

chamber for the rising of the Court, and seen him come out exhausted by fatigue, and suffering from the gout; and yet he would never allow me to go away without hearing what I had to say, and if the business was too much for him to give his mind to at the instant, he would take home the papers to consider them, and the next morning bring me an elaborate letter or answer, written during the period which he had stolen from his family or his rest." And here I may be allowed to state that his Lordship thought most highly of Mr. Thomas' services, and on several occasions spoke of him to me in the highest and most flattering terms; he frequently said that he could never have succeeded in piloting the Record vessel through the storms and tempests which had beset it, but for his assistance. He looked to him on all subjects connected with the service, and in no one single instance had he found him wanting in anything that he expected of him.*

* In a letter to Sir Charles Trevelyan, dated 5th April 1842, Lord Langdale thus speaks of Mr. Thomas :—"It is very gratifying to me to find that the attention which I have been able to pay to the accounts connected with the Records has met with the approbation of their Lordships. For the great regularity which has been observed I am principally indebted to Mr. Thomas, the Secretary of Records, and I feel confident that under his care the system which has been established will secure perfect regularity in all the Record Accounts." And one of the last letters that Lord Langdale wrote in connexion with the Record Service was to Mr. Thomas, and runs thus :—

Roehampton, 27th March, 1851.

"My dear Mr. Thomas,

"I cannot retire from my office of Master of the Rolls without expressing to you the strong sense which I entertain of the great value of your services to the Public Records.

The Treasury, however, still delayed to act on the suggestions in Lord Langdale's letter of the 7th of January, 1839, and at length he wrote again to Lord John Russell as follows:—

South Street, April 25th, 1839.

"My dear Lord John,

"If it were practicable for me to obtain an interview of only half an hour with you and the Chancellor of the Exchequer on the subject of the Records, I cannot help thinking that all, or nearly all, the impediments to the commencement of a new system of management would be overcome.

I am well aware of the difficulty you may have in finding time for a subject like this; but sooner or later the small degree of attention which is required must be given, and I feel assured that by giving it now, much future trouble will be avoided. At all events I hope

From the time when you were transferred from the State Paper Office until you became Secretary of Records, upon the establishment of the new system, and thenceforward up to the present time, the business of your office has been invariably conducted with the greatest regularity, zeal, and intelligence; and I never had occasion to apply to you for information respecting the business of the Record Office without being supplied with all that the office afforded. And it has been principally, if not entirely, to you, that the public is indebted for the recovery of the accounts relating to the Records from a state of the utmost confusion; and placing them on a footing of the greatest regularity.

I need not say how anxious I am that your services to the Records should meet with no interruption.

Believe me, my dear Mr. Thomas,

With great regard and esteem,

Faithfully and truly yours,

Langdale."

that you will soon inform me on what basis you desire any estimate or computation to be made.

I own that I am grievously disappointed at the prospect now before me of having the consideration of the subject postponed for another year. The whole business, if once established on a proper footing, ought to give the Government no trouble at all, and to give me none. It seems, I must say, to be so managed as to continue it a constant trouble to the Government, and a constant source of anxiety and trouble to me; and I hope that you will excuse me for urging you as much as I may be allowed to do, to avoid any further postponement of a final settlement.

I have the honour to be, dear Lord John, your faithful and obedient servant, LANGDALE."

CHAPTER XI.

LORD LANGDALE'S EXERTIONS TO PROCURE THE ERECTION OF A GENERAL RECORD REPOSITORY.— THE VICTORIA TOWER PLAN.— FOUND TO BE UNSUITABLE.

On the 6th of May, 1839, Lord John Russell forwarded a Treasury minute to Lord Langdale, in which the Lords of the Treasury state that "they cannot approach this subject without expressing the deep obligations which they consider the public to owe to Lord Langdale for the attention and labour which his Lordship has been pleased to bestow on a subject in which many important interests are involved, but which is not directly connected with the judicial functions of the Master of the Rolls, though zealously and most efficiently performed by Lord Langdale."

The suggestions of Lord Langdale were generally approved of on matters of detail, but on the point on which he was most of all anxious, the erection of a suitable General Record Office, their Lordships had their doubts, and they even in some measure appear to have preferred a plan of "an adaptation of the Victoria Tower, connected with the new Houses of Parliament." The steps that Lord Langdale took to show the unsuitableness of this scheme, and in which he at last succeeded, are well described by himself in a letter addressed in

1845, to Sir Robert Peel, then First Lord of the Treasury, which will preclude the necessity of printing any of the numerous letters written by him on the subject in theintervening six years.

Rolls House, May 20th, 1845.

"SIR,

"I have the honour to address you on the subject of the Public Records, which, under the statute 1 & 2 Vict. c. 94, are placed under the charge, superintendence, and custody of the Master of the Rolls, on behalf of her Majesty.

By the seventh section of the act it was enacted, 'that the Lord High Treasurer, or any three or more of the Commissioners of her Majesty's Treasury, shall provide such suitable and proper, or additional building or buildings, as may be required for the reception and safe custody of all the Public Records which, under the provisions of this act, shall be in the legal custody of the Master of the Rolls.'

This enactment, together with the need which there seems to be of your interposition, and my confidence that you will not think any application connected with the public service of the Treasury improperly made to you, are my reasons, and must, if necessary, be my excuse for troubling you on this occasion.

One great cause of the disorder which has taken place in the management of the Records, and of the irreparable losses which have been sustained, has arisen from their being placed in the custody of several independent authorities, in various places of deposit, and

being commonly left in the entire charge of inferior officers, whose interests were, sometimes, opposed to the interests of the persons requiring the use of the Records.

The inconveniences arising from the dispersion of the Records have long been the subject of observation and regret, and a general repository has been occasionally hinted at as the remedy for those inconveniences; but I am not aware that the subject was seriously considered, with a view to any practical remedial measures, till the year 1831, when the matter was brought under the consideration of the late Record Commission.

In the year 1832, a proposal for the erection of a General Record Office, Judges' Hall and Chambers, and other buildings, on the site of the Rolls Estate, was printed, with the sanction and at the expense of the Commissioners, and the subject having been for some time under consideration, a bill for empowering the Commissioners of Woods, &c., to erect a General Record Office was prepared, and was approved of, and is said to have been settled by Sir John Leach, Master of the Rolls, in communication with the Treasury and the Commissioners of Woods, &c.; notice of motion for leave to bring in the bill was given by Lord Duncannon in July, 1834, but the motion was not made.

This proposal was objected to by Mr. Adams, the Accountant-General of the Court of Chancery, by reason of its being connected with a proposal to provide for the expenses out of the suitors' fund. He very properly considered it to be most unjust and unreasonable to take the property of the suitors in Chancery, to provide for the care of the Records of the other Courts of Justice,

and of the National Records in the Augmentation Office and Chapter House. The failure of a scheme, the expense of which was intended to be so defrayed, is not to be regretted.

On the 15th of August, 1836, the Select Committee of the House of Commons on the Record Commission, p. 39, express themselves thus:—'The witnesses, whose opinion is entitled to the greatest respect, acknowledge the feasibility and the importance of erecting a General Record Office, into which all the Records of the country might be collected, and your Committee do not hesitate to recommend the erection of such an edifice, as the first and most essential step for the improvement of the present system' of managing Records.

In February, 1837, the Commissioners of the Public Records, in their observations made on the Report of the Select Committee, state as follows, p. 3:—'The opinion of the Commissioners has long been, that the present buildings ought to give way to a general repository for Records.' And about the same time the same Commissioners, in their Report to the late King, pp. 10—12, stated their reasons for the opinion they held of the propriety of erecting a general repository for the Records.

On the 24th of February, 1837, a Bill to provide for the safe custody, &c., of the Public Records was introduced into the House of Commons by Mr. Charles Buller, Mr. Hawes, and Sir C. Lemon; and in the first clause of that Bill it was proposed to make an enactment for providing a general repository for the Records in London or Westminster.

The Record Commission expired six months after the death of the late King. With my consent, Lord John Russell committed to me the temporary charge of the business and property of the Commission, and on the 14th August, 1838, the Public Records Act, 1 & 2 Vict. c. 94, to which I have before referred, was passed.

On the 7th of January, 1839, I submitted to Lord John Russell my view of the necessity of providing a Public Record Office, and also a plan for the management of the Records. A copy of this letter is printed in the Appendix to the First Report of the Deputy Keeper of Records, p. 67, paragraphs 4 and 5. The fifth paragraph suggests the expediency of providing the general repository for the Records on the Rolls Estate, near the courts of justice and the law offices.

The Treasury Minute on the subject is printed in the same Appendix, p. 71.

It appears by the Minute that one General Record Office, under efficient management and responsibility, was considered to be essential to the introduction of a perfect system; but it was observed, that it had been determined by Parliament that the Victoria Tower should be erected, and if that building could be adapted for the safe custody of the Records, the expense to the public for a second building would be altogether avoided, and on those grounds the Lords of the Treasury were unwilling, without a more accurate knowledge of the facts, and more precise information before them, to determine in favour of building a new Record Office on the Rolls Estate.

Under these circumstances the Commissioners of

Woods, &c., were directed to make the necessary surveys with a view of considering, in communication with Mr. Barry, whether sufficient space would be afforded in the Victoria Tower for the safe custody and arrangement of the Records, admitting, at the same time, of adequate access for the public for consultation and reference.

Surveys were accordingly made, and in July, 1840, Mr. Chawner and Mr. Barry made their Reports, which are printed in the First Appendix to the Second Report of the Deputy Keeper, pp. 19, 22.

Mr. Barry was under an erroneous impression, that some portion of the Records could, consistently with a proper arrangement, be considered as of secondary importance, and might, for that reason, be properly abstracted from Records supposed to be of greater importance, with which they were connected, and be placed in a store-house out of the office; and under that impression Mr. Barry expressed himself as follows:—

'Thus it will be seen that the whole of the Records now in existence may be placed in the Victoria Tower, and accommodation afforded therein for an annual increase for many years to come; but as it is probable that a very considerable diminution of their bulk will be occasioned by abstracting those which are of secondary importance to be placed in the store-house, the accommodation afforded by the Tower would be likely to prove sufficient for several centuries.'

The Reports of Mr. Chawner and Mr. Barry were sent by Mr. Milne to Sir Francis Palgrave, who, by my

directions, wrote to Mr. Milne the letter of the 31st July, 1840, which is printed in the same Appendix, pp. 22, 23.

A Report was subsequently (*i.e.* 4th November, 1840) made on the subject by the Commissioners of Woods, &c., and sent to me on the 24th March, 1842, and my opinion was asked as to the plan for the permanent accommodation of the Records.

My answer is dated 4th October, 1842, and is, together with the reply, dated 28th November, 1842, printed in the First Appendix to the Fourth Report of the Deputy Keeper, pp. 37, 39.

The letter of the 4th October, 1842, contains the statement of the reasons for the opinion which I entertain that the general repository for the Public Records ought to be erected on the Rolls Estate, or at least in the neighbourhood of that estate, and of the courts, and offices of the courts, of law and equity; and I take the liberty of requesting your particular attention to those reasons.

I am not aware whether the same reasons remain in their full force at this time, as without knowing it, I have some reason to think that they may have been disregarded, and made somewhat less cogent by arrangements made for affording accommodation for the offices of the Courts of Common Pleas and Exchequer, in Serjeants' Inn and Lincoln's Inn.

The Treasury Letter of the 28th November, 1842, left the question as to the site of the New Record Office in some degree of suspense, but it appeared to me that a

decided preference for the Victoria Tower was shown, and it remained to be seen whether proper accommodation could be there obtained.

Whilst things remained in this state, the inconvenience arising from the dispersion of the Records became more obvious, and occasional alarms of fire occurred in the different offices; but the danger, though such as ought not to be incurred at all, did not appear to be extremely urgent till December, 1843, when I was very unexpectedly informed, that upon an examination of the Record Office at Carlton Ride, by Mr. Braidwood, it appeared that the Records there placed were exposed to very great and extraordinary risk from fire.

By a letter dated the 21st December, 1843, I communicated the circumstances to the Lords of the Treasury, and then added as follows:—

'Their Lordships will, I hope, excuse me for taking this occasion to press most earnestly upon their attention the urgent necessity of providing for the Records a permanent place of deposit, fire-proof, and in all respects safe.

Questions relating to the site and form of the proposed Record Repository are no doubt of great importance, but it appears to me that everything else relating to the Records, ought to yield to the imperative duty of providing for their safety at the earliest practicable period. To permit them to remain exposed to the present risks, is to keep them subject to the probable chance of being destroyed, and lost to the country for ever; and the loss would be irreparable.

To render the Records inaccessible or difficult of

access to the public, even for a short time, would be productive of very great inconvenience, and might occasion to many persons the loss of their rights, of which the Records are the evidence; but for the sake of preserving the Records in safety for all future time, and in preference to leaving them exposed to destruction in the manner they are now, it appears to me to have become a question for serious consideration, whether it is not expedient to pack up the Records closely in a safe place, such as the Tower, and leave them there difficult of access (as if closely packed they must be) for the limited time during which a proper repository might be prepared for them.

I earnestly and respectfully request their Lordships to give their early attention to this subject, and to inform me, as soon as they conveniently can, within what time I may reasonably hope that a General Record Repository will be provided.'

This letter was referred to the Commissioners of Woods, &c., and upon their report I was informed, on the 23rd of February, 1844, that certain parts of the New Houses of Parliament could be prepared for the Records within the current year. In the meantime I communicated personally with Mr. Barry, who accompanied me to inspect the repository in Carlton Ride, and at his request, and pursuant to his instructions, an entirely new measurement of the Records now in my custody was made by Mr. Cole, who made his report thereon on the 24th February, 1844. I communicated this report to Mr. Barry, and on the 18th April, 1844, after having consulted the Record officers, I informed

Mr. Barry of the particular accommodation which would be required in the Record Office.

The whole matter was, I have no doubt, carefully and skilfully considered by Mr. Barry. But it appeared that the Victoria Tower and the adjacent parts of the building, which could be applied to the purpose, were not of themselves sufficient to afford the necessary accommodation to the Records; and therefore it became necessary for Mr. Barry to consider in what other part of the New Palace a considerable portion of the Records could be placed. Mr. Barry has been, I believe, unable to find any place better than the roofs; and on the 17th February, 1845, he requested me to state whether the roofs of the New Houses of Parliament were likely to be satisfactory for the reception of a portion of the Records.

Soon afterwards Mr. Barry was kind enough to permit me to inspect the roofs intended to receive a portion of the Records, in his presence; and at a subsequent period the same roofs were, at my request, inspected by Sir F. Palgrave, the Deputy Keeper of the Records; Mr. Thomas, the Secretary; and the Assistant-Keepers, Messrs. Palmer, Hardy, Cole, and Hunter. Their report to me is dated the 14th day of May, instant, and a copy of it is subjoined to this letter.*

I beg leave to state that I entirely concur in the conclusions stated in this report. I think that the roofs of

* Each of these officers made his own separate report, and after various consultations together, they made a joint report, here referred to by Lord Langdale, but which it is unnecessary to print, as its substance is given by his Lordship.

the New Houses of Parliament are so far from being likely to be satisfactory, that they are in fact wholly unfit for the reception of any Records which ought to be preserved.

They may afford space for packing up or stowing away Records, but no part of the Public Records, the preservation of which is required for the public service, or for any public or national purposes, ought to be stowed away in a lofty roof, or in remote and obscure recesses.

All the Public Records ought, on the contrary, to be accommodated in the manner of books, in a well-arranged public library, affording easy access for frequent consultation and reference; and I conceive it to be perfectly clear, that the roofs in question do not afford the means of properly arranging any portion of the Public Records, or the means of giving the public proper access to them, or the means of duly protecting them from injury and depredation.

I need not, on this occasion, say anything of the great importance of arranging and preserving, under a well-regulated system, the Public Records of the kingdom, including, if it should be thought proper, all the State Papers and public documents and accounts not wanted for the current purposes of the several offices of Government; nor is it necessary to speak of the neglect and exposure to loss and depredation, to which the Public Records of this country have been so long subjected.

But I submit to you, that the future preservation of the Records ought to be provided for without any further or unnecessary delay. The wish or intention of

placing them in the Victoria Tower, and other parts of the New Palace, has failed, for want of space for its accomplishment.

The Records, for want of a safe general repository, continue to be imperfectly and unsatisfactorily managed, at an unnecessary expense; they are improperly exposed to risks which are very great and are continually increasing; and after the lapse of nearly seven years from the passing of the Public Records Act, the public has not the benefit which was intended to be secured. Some considerable improvement has, I hope, been made, but this improvement (if conceded) bears no proportion to that which might, and would, have been effected, if a proper repository had been provided. Even if the new repository for the reception of the Records were commenced at the earliest practicable period, the time which must necessarily elapse before the completion of the building will leave the public exposed to the continual hazard of that which, as it appears to me, ought to be considered as a very serious national calamity, *viz.*, the destruction by fire of large portions of the whole collection of records; and I own that I cannot, without great uneasiness and alarm, contemplate the addition of delays which appear to me to be wholly unnecessary, to the delays which cannot be avoided.

It is under these circumstances that my present application is made to you, and I cannot help hoping that you will see reason to give early directions for providing a proper building for the deposit of the important public documents which constitute the Records of this kingdom. It is the word only (if you should think it right

to pronounce it) which is wanting; for the subject and all its details have been under the careful consideration of the Board of Works, and of Mr. Barry, whose knowledge of the nature of the accommodation required, and whose long attention to the subject might, I should hope, be made available for the public, notwithstanding the impracticability of finding that accommodation in the building preparing for the New Houses of Parliament.

There are some important matters connected with the subject of this letter which I abstain from mentioning, only because they do not seem absolutely necessary for the consideration of the question, whether directions ought to be now given for erecting a proper building; and I am fully aware that I ought not to make any unnecessary demand upon your time.

I have, &c.

LANGDALE."

On the 14th July following, Lord Langdale again pressed the subject of a General Record Office on the attention of the Government in relation to the insecurity of the Rolls House and Carlton Ride. In a letter to Sir James Graham, then Secretary of State for the Home Department, of that date, his Lordship says:—

"It is, I apprehend, perfectly clear, that neither of these buildings is or can be made properly secure for the purpose to which it is applied, and that no adequate security can be obtained without providing for the Public Records a proper fire-proof building. Nothing else can be satisfactory. The subject requires the most

prompt attention; and on the 20th of May last I addressed a letter concerning it to Sir Robert Peel. I therefore hope that the insecure state of the Records is under his consideration.

The Lords of the Treasury were apprized of the very perilous state of the Carlton Ride in the month of December, 1843, and I believe that since that time every thing likely to diminish the danger of that building has been done. The dangerous state of the Rolls House was subsequently discovered; and it appears that at this time some diminution of the dangers may be effected by means of the works pointed out by Mr. Braidwood.

I very much regret that so much expense has been incurred, and may be incurred, in producing imperfect remedies and make-shifts, whilst the great and only effectual security is delayed; but it appears to me to be better to incur such expense than to leave the Records for any time whatever with less security than it is practicable to obtain for them.

I beg leave to express the great satisfaction which it affords to me to observe the interest which you have taken in the safety of the Records, and I hope that you will excuse me for intimating the responsibility which must attach to me, and to all who have any duty to perform in this matter, if, after the knowledge acquired and notwithstanding every precaution which can now be taken by those who have the immediate charge of the Records, an irreparable loss should be occasioned by an accidental fire."

On the 9th of August, Lord Langdale received an answer to the letter he had addressed to Sir Robert

Peel, which he, as First Lord of the Treasury, had laid before the Treasury Board. Their Lordships intimated that, after full consultation with the architect of the Victoria Tower, they were not satisfied as to the propriety of altering the destination of that tower for the reception of the Public Records; and they waive the consideration of erecting a Public Record Office on the Rolls estate on account of the expense, &c.

To this letter Lord Langdale sent the following reply, addressed to John Young, Esq., Secretary to the Treasury:—

Rolls House, Aug. 16th, 1845.

"Sir,

"I have to acknowledge the receipt of your letter dated the 9th instant, communicating to me the answer of the Lords Commissioners of Her Majesty's Treasury to the letter which I addressed to Sir Robert Peel on the 20th day of May last.

It is gratifying to me to be assured that their Lordships concur with me as to the importance of having provision made as speedily as possible for the safe custody of the Public Records.

Their Lordships, however, state, that 'after full consultation with the architect they are not satisfied as to the propriety of altering the destination' of the Victoria Tower; and that waiving 'the consideration of the heavy expense which would be incurred by enlarging the Rolls Estate, and erecting upon it a building calculated to contain all the Records which now exist, or which may accumulate for some years to come, my Lords consider it most advisable to adhere to the plan of ap-

plying the Victoria Tower, and certain adjacent parts of the New Houses of Parliament, to the accommodation of the Public Records;' but that if I 'should be of opinion that the space thus assigned will not suffice, my Lords would suggest whether some classification of Records might not be made, which, without interfering with the unity of superintendence, might rather facilitate reference, by placing one or more classes in separate buildings in the neighbourhood of the general repository' *i.e.* (I presume), the Victoria Tower.

I should be extremely sorry to misunderstand the meaning of their Lordships, and therefore I take the liberty of stating, that I conceive the purport of your letter to be, (1.) That the Victoria Tower and certain adjacent parts of the New Houses of Parliament are intended to constitute, or be the site of the new Record Office; and, (2.) That if the space there assigned should not suffice, their Lordships suggest a division of the Records into classes, which may be placed in separate buildings, in the neighbourhood of the Victoria Tower.

Of these two subjects, both of which are very important, the second is far more important than the first.

I. Having understood that their Lordships had a decided preference for the Victoria Tower, and the adjacent parts of the New Houses of Parliament, as a site for the Record Office, and that sufficient space could there be found, I had ceased to trouble their Lordships on the subject. I was only anxious to assist, as far as I could, in making the necessary arrangements pursuant to the decision of their Lordships; and I should not have revived the question, if the plan proposed by Mr.

Barry for providing proper accommodation in the roofs had not failed.

It was by this circumstance alone that I was induced to attempt to obtain a reconsideration of the question. The reasons for placing the Record Office near the offices of the courts of law and equity still subsist. The fact that the Rolls Estate is the property of the Crown (the only reason for preferring that to any other site in the same vicinity), still exists. The possibility of procuring another site in the same vicinity, by exchange for the Rolls Estate, or by money to arise from the sale of it, still remains. The inconveniences likely to arise from placing the Records at a distance from the ordinary and habitual resort of those who have the most frequent occasion to consult them, are by no means altered; and it seems reasonable to presume, that in the erection of a great public work a careful Government would desire to consult public convenience to the greatest practicable extent.

Nevertheless, I have always borne in mind the imminent risk of destruction to which the Records are constantly exposed, from the insecurity of the buildings in which they are now deposited; and that many inconveniences, though of a permanent nature, ought to be submitted to, in preference to the continuation of the present danger, for any time longer than can by any means be avoided.

For the sake of procuring earlier safety, I before ceased to make any objection to the site of the Victoria Tower, and their Lordships now inform me that the Victoria Tower 'will be ready for the reception of

Records at an earlier period than any building that might now be commenced exclusively for that purpose could be completed, and consequently (that) the period during which the risk of fire will be incurred in the present building will be considerably shortened.' This fact, which I accept as such on the statement of their Lordships, though it is very contrary to the prior impression which I had reason to think was well founded, must be my reason for admitting that, if all other requisites be provided, I ought not further to insist on any objection to the site and form of the Victoria Tower as a repository for the Records.

I make the admission with great reluctance, and only on the ground stated by their Lordships, that by the adoption of the Victoria Tower, 'the period during which the risk of fire which is incurred in the present building will be considerably shortened.'

II. But all other inconveniences, however great in themselves, are trifling in comparison with the inconveniences which must necessarily arise from the suggested division of the Records into classes, to be placed in separate buildings, though in the neighbourhood of the general repository.

When their Lordships mention separate buildings in the neighbourhood of the general repository, I presume that they mean to exclude the notion of buildings under the same roof as the buildings adjacent to the Victoria Tower, or contiguous to it, or in immediate communication with it; and if it had not been for the terms in which the suggestion of your Lordships is stated, I should have scarcely thought it necessary to observe—

1. That the expense of erecting several buildings to answer a specified purpose must be greater than the expense of erecting one sufficient building for the same purpose.

2. That the unity of superintendence, and a proper control over the management of the Records, cannot by any means be rendered as efficient and useful in several buildings as in one building; and,

3. That facility of reference cannot by any means be so efficiently secured in several buildings as in one building.

And as to the reasons stated for the conclusion to which their Lordships have arrived, I beg leave to make the following observations—

1. The Victoria Tower has never, that I am aware of, been deemed sufficient to afford an adequate repository for the Records, otherwise than upon the erroneous notion that large masses of the Records which ought to be preserved, might nevertheless be deemed to be of, what has been called, secondary importance, and might, as such, be stowed away or packed up in remote places of less convenient access. This great error has by no means been confined to those who have had the duty of inquiring into the amount of accommodation required; it seems easily to occur to all who look at the question for the first time, and it has prevailed, and, as I believe, still prevails, in the minds of almost all persons who have not duly considered the subject in all its bearings. If there are any persons who resolve to decide upon the first and superficial view of the question which leads to this error, without due inquiry and

without attaining the knowledge which is within their reach, I cannot think them free from blame; and the more so, because I have now so much reason to fear that the errors which are made as to stowing away and classifying Records will ultimately induce, if it has not already induced, the Government to throw away this, probably the only, opportunity which may ever occur of placing the Records and Muniments of this kingdom on a proper footing, and under a proper system of management.

2. I concur with their Lordships in the opinion that, even upon the plan already announced, the Victoria Tower will afford to the Records much greater accommodation than has been afforded to them at any antecedent period: and if the only object were to have something better than the present bad system, without considering how good a system might and ought to be established, their Lordships would have no occasion to trouble themselves further about the Records, and the public might be spared any further expense about them. What we have now, though bad, is very far superior to anything which has hitherto been had; and undoubtedly the Victoria Tower, large as it is intended to be, and as free as it can practically be made from risk of fire, will be so great an improvement as to be accepted with gratitude by all who take an interest in the Records. But considering the disgraceful manner (for it is nothing else) in which the Records have heretofore been kept and managed, and the danger from fire to which they have been and now are continually exposed; considering also that the public object is to have the Records not only safely kept, but also properly accommodated,

arranged, and managed, and that the attainment of that object is now urgently and most justly demanded, and not difficult to accomplish, their Lordships must excuse me for saying that the adoption of an improved system which, notwithstanding the improvements, unnecessarily continues some of the principal defects in the old system, cannot be satisfactory to any reasonable mind.

3. I also concur with their Lordships in the opinion that deficiency of room is an evil which, from the rapid increase of Records, cannot, under any arrangement, ultimately be avoided. But admitting that no arrangement which can be now made will prevent a deficiency of room for ever, their Lordships can hardly expect me to consider this as a sufficient reason for making no provision against deficiency of room for any time whatever, or as an available reason for making a repository, known to be defective even from its inception, or for making two or several repositories instead of one.

I cannot omit this occasion of stating that, in my humble opinion, the subject has not even yet been sufficiently considered; but I am perfectly aware that if their Lordships have finally determined what to do, or what to omit in this matter, I can have no hope, by any influence of mine, or by any reasons which I can offer, to induce them to bestow any further attention on the subject. I shall avail myself of such means as I may possess to relieve myself from the responsibility which I think will justly attach to those who, having the means and opportunity of securing a good system, do not hesitate to adopt a system manifestly defective, although

it may be (as I think it is) much better than the bad system which has hitherto existed.

Their Lordships seem to think that I have little, if anything, to do with the matter.

They seem entirely to forget that upon the Master of the Rolls for the time being will fall the task and the responsibility of arranging the Records for future times in the repository which may be provided.

The delays which have already taken place, and which seem likely to continue, will most probably cast this duty upon my successor, so that any hope which I might have entertained of being able to perform the duty myself, ought to be, as in fact it is, entirely removed from my consideration.

But when the site and nature of the repository are settled, it will become an important duty, the performance of which should be immediately commenced, to make all the preparations which circumstances allow, to render the repository available as soon as it is ready, and to do everything practicable to diminish all the inconveniences which can, by proper arrangements, be guarded against. This duty it must be my endeavour to perform to the utmost extent which the means afforded me will allow.

I cannot conceal from myself that their Lordships, whilst they observe the official forms of communication, do not desire any co-operation with me. My opinions are formed with reference to my only objects, the due preservation, arrangement, and use of the Records, and upon such information as I have been able to acquire in the consideration of these only objects; and, founding

myself upon that information, I am of opinion that the Victoria Tower will not suffice, that is, will not be sufficient to provide for the Government and for the public all the advantages which ought to be secured by the proper arrangement, preservation, and management of the Records; and as the suggestion of their Lordships is expressed to be contingent upon my opinion as to the sufficiency of the Tower, I should, notwithstanding the general objections to which I have referred, have now proceeded to consider in what manner the separation of the Records into classes, with a view to place separate classes in separate buildings, could be made with the least practical inconvenience. But as their Lordships have not desired, and do not appear to expect me to give any attention to the subject, I presume that they have formed and have already resolved to adopt some plan of their own; and I await the information which will be necessary to enable me to conform to their Lordships' determination, in the directions which I may have to give for the intermediate management of the Records, and the preparation of them for their final place of deposit.

And with respect to the arrangement and fitting up of the repositories which their Lordships may think fit to provide, I presume to think that some communication ought to take place between the architect and the Record Office; and I request their Lordships to give such directions as to them may seem proper for that purpose. I have, &c.,

LANGDALE."

In reply to this letter, Sir Charles (then Mr.) Trevelyan, on the 27th of August, 1845, regrets Lord Langdale's objections to the Victoria Tower, and expresses the desire of the Lords of the Treasury to co-operate with his Lordship in all Record matters; but they preferred the Victoria Tower on account of the great expense of erecting another repository; they disclaim every feeling not consistent with the most perfect respect for his Lordship; they sensibly feel the value of his Lordship's superior knowledge on Record subjects, and are thankful for the attention which, among his other numerous avocations, he has bestowed on them.

CHAPTER XII.

FURTHER CORRESPONDENCE WITH THE GOVERNMENT.—A NEW BUILDING AT LAST DETERMINED ON.—COMMENCED.—LORD LANGDALE'S RETIREMENT.—ADDRESS OF THE RECORD-KEEPERS.

On the 22nd of August, 1846, Lord Langdale addressed Sir George Grey, then Secretary of State for the Home Department, on the subject of a General Record Office, in consequence of a motion in the House of Commons by Mr. Protheroe (formerly one of the Record Commissioners), for the production of the correspondence between the Master of the Rolls and Sir Robert Peel, in 1845; the letter is as follows:—

Roehampton, August 22nd, 1846.

"My dear Sir George,

"It was not my intention to trouble you on the subject of the public Records till you were relieved from the extraordinary pressure of business towards the end of the session; but finding from the votes of the House of Commons that a production of my correspondence with Sir Robert Peel during the year 1845 has been ordered, and observing the motion of which Mr. Protheroe has given notice for the 25th instant, I hope you will excuse me for requesting your early and favourable

attention to the expediency of providing a new Record repository. The material facts relating to the subject are stated in my letter to Sir Robert Peel, dated the 20th of May, 1845. Subsequent occurrences have tended to strengthen the impression thereby intended to be conveyed, and there really is no doubt that for want of a proper Record repository—1. The Records are now constantly and unnecessarily exposed to great risk of destruction by fire; and, 2. The process of preparing and arranging the Records for the most convenient use of the public is unnecessarily impeded, and indefinitely delayed. I will only add, that in an interview which I have lately had with Mr. Barry, I understood from him that his views as to the site of the new Record repository have undergone considerable modification, and that, if required, he is ready to report upon the means by which a proper building, in a proper situation, may be most speedily obtained.

I have, &c., LANGDALE."

And on the 9th of November following, his Lordship again addressed Sir George Grey to the following effect:—

Rolls Court, Nov. 9th, 1846.

"MY DEAR SIR GEORGE,

"I hope that you will not think me unduly importunate when I now take the liberty of most earnestly requesting your early and serious attention to the state of the public Records, and the weighty reasons which there are for providing a general repository for their preservation and use without any further delay.

I beg leave to refer to the statement of facts contained in my letter to Sir Robert Peel, a copy of which you have.

The Records still continue to be exposed to the same risk of destruction from fire and other casualties; and (from want of space and adequate means of arrangement in dispersed repositories) the public is still without many of the most important benefits which were justly expected to be secured by the Records Act.

What has been done (under many disadvantages) has, nevertheless, been sufficient to show the utility and importance of placing the public Records and Documents under a proper system of management. The state of the Records brought under the operation of the act is very greatly improved, and they are much more easily accessible than they ever were before.

We have received into the Record Office many documents from other places of deposit in which they were exposed to still greater hazard of destruction. Many documents have been received from the Treasury, and many from the Admiralty; but our space is so confined, that at present we are not only unable to receive several documents which the Board of Admiralty has desired to send to us, but even the accruing Records of the courts of law, which ought to be annually sent to us.

If you could be prevailed upon to make a visit to the Carlton Ride, which is not far from the Home Office, or to the Tower, or to the Rolls Chapel, you would, I think, be convinced, by a short inspection of the Records there, that my application on this subject is not unreasonable. I apply to you, because I consider the Record Office to

be under the special superintendence of the Home Office; but if you think that I ought rather to make my application to the Treasury, or to the Chancellor of the Exchequer, I will do so; and I shall be most desirous to communicate every information that may be material in considering the subject in all its details.

I remain, my dear Sir George,

Ever faithfully and sincerely yours,

LANGDALE."

In 1847, under the sanction of the Metropolitan Improvement Commissioners, and with the assent of the Government, Mr. Pennethorne made a design for a Public Record Office, to be erected on a portion of the Rolls Estate. This building was to have been in connexion with the formation of a new street, which was intended to be a central communication between the eastern and western parts of the metropolis, commencing in Long Acre, and extending to the west end of Cheapside. But the great expense of carrying out Mr. Pennethorne's plan, prevented its execution. Lord Langdale gave his unqualified approval of the site for the Record Office, which was entirely in conformity with the opinion he had expressed in a letter to the Treasury of the 4th October, 1842, but he did not entirely approve of some of the details of the building plan of the proposed Repository. In November, 1847, the usual Parliamentary notices were given, that a Bill would be brought in during the ensuing Session, to carry the plan into execution; but for some official reason, the measure was never proceeded with.

Whenever an opportunity occurred, Lord Langdale never failed to bring the subject of the necessity of a General Record Office before the Government, and to insist that the Rolls estate was not only the most proper locality for such an edifice, as being in the centre of legal business, but also the cheapest site that could be obtained, as nearly all the ground upon which it would be built, was already public property.

Almost worn out by continual applications and exertions about the erection of a General Record Repository during eleven years, Lord Langdale began to despair of seeing the accomplishment of his darling project; but the present Deputy Keeper (Sir Francis Palgrave) advised him to make one more attempt. It occurred to him (he said) that there had been much miscalculation, not only as to the space required for such a building, but also in the expense of its erection; and he accordingly made a fresh calculation, which he submitted to Lord Langdale. His Lordship seeing there was much reason, and considerable judgment in what Sir Francis Palgrave brought forward, sent his statement to the Treasury accompanied by the following letter to Sir C. E. Trevelyan:—

Rolls House, Jan. 8th, 1850.

"Sir,

"I beg leave to acquaint you, for the information of the Lords Commissioners of Her Majesty's Treasury, that I have received from Sir F. Palgrave the inclosed letter of the 14th December last, and the two plans which I send herewith.

It is so necessary for the safety and proper management and use of the Records, that they should be collected in one secure place, that I hope to be excused for again requesting the attention of their Lordships to the subject.

What is wanted is a block of building, fire-proof, of sufficient dimensions, and containing such compartments and accommodation as are required for air, light, proper arrangement, and convenient access.

The plan now suggested by Sir F. Palgrave is founded upon principles of the strictest economy, and is wholly unconnected with any other building scheme; in the last particular it differs entirely from the plans which have been heretofore proposed for building a Record Office in connexion with the Houses of Parliament, the Courts of Justice, or any contemplated improvements of London or Westminster.

I cannot judge whether a building erected on the proposed plan would be sufficient for all the required purposes; but in the hope that the long avowed intention and promise to build a Record Office are not abandoned, I think that this plan deserves great consideration; and I hope that their Lordships will direct that it be considered in all its details by the officers of her Majesty's Commissioners of Woods, &c.; and that, if approved by them, it will meet with the favourable consideration of their Lordships.

I have the honour to be, Sir,

Your obedient servant,

LANGDALE."

Shortly after, the Lords of the Treasury intimated their intention to commence the building of the Repository, so emphatically urged by Lord Langdale, and so long desired : the site to be the Rolls Estate, and the building to be comprehended within the boundaries of such estate, that site being in all respects the best and most convenient which the metropolis affords.

Mr. Pennethorne was therefore ordered by the Board of Works to prepare plans for the immediate erection of a block of building capable of receiving all the Records now in the custody of the Master of the Rolls, or that would accrue for twenty years to come. The plans were executed, and approved of by Lord Langdale: the excavations were even made for the foundations of the Repository; but alas! another hand was destined to lay the first stone.—" Magnis tamen excidit ausis."

On Tuesday the 26th of March, I saw Lord Langdale for the last time: he came to take his leave of the Record Department, which, it may be truly said, he had created, and which he regarded with parental affection: he felt an individual interest in the members of the establishment, and, perhaps, with some solitary exception, he was beloved and idolized in return.

My parting with him will never be effaced from my mind. Through all the trials of my official life, which were not a few, he was the friend on whom I could rely for support and assistance. " Come to me," he has often said when I have been harassed and vexed, " let me hear all about your grievances, and if you are right, I will be your safety-valve; if wrong, I will always advise you for the best."

My grief at parting with such a friend may be easily imagined, for I could not expect another to be to me what he had been. I shall never forget his agitated voice and moistened eye, as he responded to the regret I felt almost too keenly to express; again and again he shook my hand, and said, "Don't be uneasy, this is not a final parting; though I may no longer be your Master, yet I shall always remain your friend, and shall come and see you often, and you must come and see me. I will myself introduce you to my successor, and it will be your own fault if you do not make him feel an interest in you—not perhaps to the extent that I do—that you can hardly expect; but if you do your duty as you have hitherto done, you will win his confidence as you have done mine." After some conversation, of deep interest to me, though of no importance to the reader, I accompanied him all over the Tower establishment, and he shook hands with and said good bye to every individual engaged in it. That day we parted, and I unhappily never saw him more.

To the other Record Establishments he paid a similar visit, and left sorrow and regret behind him.

When the excitement occasioned by his retirement had slightly subsided, the Assistant Keepers met, and unanimously agreed that an address should be presented to him, as a testimonial of their deep respect and just appreciation of his character.

The following address, drawn up by Mr. Hunter, was signed by all the chief officers, except one, who declined to place his signature with the rest.

"TO THE RIGHT HONOURABLE LORD LANGDALE, &c.

"MAY IT PLEASE YOUR LORDSHIP,

"We, the undersigned, being Officers of the Public Records, who have so long enjoyed the benefit of your Lordship's vigilant superintendence, and just and prudent direction of the affairs of our department, feel that we should be wanting in respect, and deficient in our duty, if we did not venture to express in a few words the deep regret with which we have received the information that the time has arrived when that superintendence and direction will no longer be continued to us.

We cannot but recall, each of us for himself, instances of your Lordship's kind consideration. We cannot but collectively feel that we have received essential benefit from the firm and temperate manner in which this department of the Public Service has, when need were, been protected by your Lordship, and its reasonable claims supported.

We cannot but regard your Lordship with the deepest respect and veneration, as having been the author of a new system of management of the Public Records of this nation; by which provision is made for their better security and more extended usefulness; a system, the value of which will be better understood as time passes on; so that distant generations will feel how much they are indebted to you. Nor can we forbear on this occasion to speak of our concern that it has not been permitted to you to witness the complete development of all that your Lordship has contemplated in respect of

the invaluable muniments of which, at so much personal sacrifice, you undertook the charge.

May your Lordship, therefore, be pleased to accept this expression of sincere feeling from persons whose situation enabled them to form a just appreciation of your Lordship's eminent services in this department, and their most earnest wishes that, with renovated health, you may enjoy all comfort and happiness in the years which remain of a useful and honourable life.

We are, with profound deference and respect, your Lordship's most faithful and devoted servants,

(Signed) F. S. Thomas,
Thomas Palmer,
T. Duffus Hardy,
Joseph Hunter,
Henry Cole,
Fred. Devon,
Henry George Holden,
Chas. Roberts,
Willm. Henry Black,
H. J. Sharpe.

April 2nd, 1851."

Lord Langdale replied by letter to Mr. Thomas, as follows:—

Roehampton, April 5th, 1851.

"My dear Sir,

"I request you to convey to the Record Officers who have favoured me with so kind an address, the high gratification which I have received from this proof of their regard and good opinion.

It will always be a great pleasure to me, to remember that in using my best endeavours to lay the foundation of a system of Record management, which I hope will, in due time, be productive of great benefit, I have for so many years been associated with men of so much learning, ability, and industry.

I remain, my dear Sir,

Very truly yours,

LANGDALE."

CHAPTER XIII.

LORD LANGDALE AS A TRUSTEE OF THE BRITISH MUSEUM. — MEETS WITH AN ACCIDENT THERE.—APPOINTED ONE OF THE COMMISSIONERS OF INQUIRY. — HIS SUGGESTIONS FOR THEIR REPORT. — SURREPTITIOUSLY PRINTED.—SUGGESTIONS AS TO THE DEPARTMENT OF PRINTED BOOKS.— REFUSES TO SIGN THE REPORT OF THE COMMISSIONERS.— HIS OPINION OF THE BRITISH MUSEUM AS A WHOLE.

In addition to his onerous judicial duties at the Rolls and the Privy Council, Lord Langdale got through an incredible quantity of other public work. The great number of judgments he delivered, and of causes he determined in the fifteen years during which he presided at the Rolls, has already been mentioned. I have endeavoured to give some faint idea of his labours as the father of Record Reform, and I am now about to speak of his acts as Trustee and Commissioner of the British Museum.

It is almost impossible to give a correct notion of his labours in each of these different and distinct branches of the public service; whatever he undertook he did thoroughly; heart and soul were in the subject before him; and as he never performed his work by deputy, the wonder is where he found time to accomplish all he did; nothing but the adoption of a perfect system enabled him to get through it. The great characteristic of his mind, the power of analysis, has been already men-

tioned, and this he brought to bear on all the questions submitted to his consideration. He always read with a pen in his hand, noting and commenting as he went along, and when he had got through the subject on which he was employed, he commenced an analysis which was continued until he had reduced it to its simplest elements.

I have been betrayed into these remarks by going through his memoranda connected with the British Museum, of which he was one of the official Trustees by virtue of his office of Master of the Rolls.

He never missed a meeting of the Board of Trustees when the hour permitted his attendance,* and then he did not attend in order to learn his work, but to give his well-digested advice and opinion upon the matter to be considered.

The Government knew their man when they selected him in 1848 from among the body of Trustees to be one of the Commissioners appointed to inquire into the British Museum.

Though he was well aware that the Commission was not appointed in the spirit of hostility to the Trustees, yet during the continuance of the commission he thought

* While attending a meeting of the Trustees, on Saturday, 14th October, 1844, and inspecting the new works then in progress, he fell and dislocated his shoulder. Dr. Paris, another of the Trustees, was luckily present, and immediately set the shoulder; as soon as the operation was performed, Lord Langdale, laughing, said that he should inform against him for acting in the capacity of a surgeon. Then, turning to the Bishop of London, he said, "You see, my Lord, what comes of following the Church too closely." The Bishop had been walking, when the accident happened, immediately in front of Lord Langdale, who was near-sighted.

it would be unbecoming in him to attend the usual meetings of the Trustees, and he, therefore, absented himself from them, and attended those of the Commission which were held at such times as he could be absent from his judicial duties, very much regretting that he could not attend the whole of them, for he felt a deep interest in the inquiry. Although he was present at five only of the sittings,* yet he never omitted reading the printed evidence as it was sent to him, and according to his usual habit, noted and commented on it as he went along, and then digested his notes; he made indices to all the material points of the evidence, and compared the conflicting and harmonious portions of it; he made references and cross references to every material fact elicited from the various witnesses; in fact, he produced a perfect analysis of every portion of the evidence (so that he could tell at once who had been examined, and what was the nature and purport of the evidence of each person), and of every parliamentary paper that had been referred to, or used during the inquiry; his notes and abstracts on this one subject are before me, and would fill a good-sized octavo volume.

When the inquiry as to management was finished, Lord Langdale drew up, on the 4th of February, 1849, from his own digest, the following suggestions relative to a Report to the Government, and which he placed in the hands of the Lord Advocate for the use of the Commissioners.

* He never could attend when the evidence was taken, as the Commission always sat for that purpose while he was engaged either at the Rolls or the Privy Council.

"By the act (26 Geo. II. c. 22) it is provided (sec. 20) that the several collections therein mentioned shall be preserved and maintained in one repository.

That the whole shall be vested in the Trustees on trust, that a free access to the repository, and to the collections therein contained, should be given to all studious and curious persons, at such times, in such manner, and under such regulations for inspecting and consulting the collections as by the trustees should be limited for that purpose.

The trustees are incorporated, with power to make bye-laws and to hold lands (sec. 14).

And they are empowered (sec. 15),

1. To make and establish rules and ordinances for the custody, preservation, and inspection of every part of the collections.

2. To assign salaries and allowances to the officers and servants appointed to attend and assist in the care and preservation of the collections; and

3. To suspend or remove any officer or servant for misconduct or neglect of duty.

The Archbishop of Canterbury, the Lord Chancellor, and the Speaker of the House of Commons are trustees, gifted with peculiar powers, and are called the principal trustees.

The principal librarian has committed to him chiefly, the care and custody of the repository.

He is appointed by his Majesty, but is to be one of two persons, each of whom is recommended by the principal trustees, or any two of them, as fit to execute the office (sec. 16).

The other officers and the servants, where attendance and assistance are necessary in the care and preservation of the repository, are appointed by the principal trustees, or any two of them.

Neither the principal librarian (not named by that title, but described as the 'person to whom the care and custody of the repository is chiefly committed'), nor any other officer or servant is to be permitted to supply his place by deputy, unless in the case described (sec. 18).

But the principal librarian (again not named, but described as the 'person to whom the care and custody of the repository is chiefly committed') is to be assisted by subordinate officers, appointed continually to assist him in the execution of his duty.

Supposing the Secretaries of State to be three, the number of trustees was at first forty-two, *viz.*,

Official Trustees.	21
Family Trustees (Sloane, Cotton, Harleian). .	6
Elected Trustees	15
	42

To whom have since been added:—

Two Official (Prs. of Antiquaries and R. Academy). .	2
One Royal Appointee	1
Three Family Trustees (Townley, Elgin, Knight). .	3
	48

It seems deducible from the provisions of the act, that, subject to the rules made by the trustees, and the control to be exercised by them as occasion might require, the practical management and government of the establishment was intended to be vested in the principal

librarian (to whom the care and custody of the repository was chiefly committed), and the subordinate officers and servants continually appointed to assist him in the execution of his duty.

It does not appear that the practical management and government was intended to be vested in the trustees, or any of them.

But they had expressly given to them the power of making laws and regulations, of assigning salaries (with reference, of course, to the sums with which they were entrusted) and of suspending or removing officers.

To these powers are incident the power of inquisition, superintendence, and control, together with all other lawful powers required for the due consideration of what laws should be from time to time made, and how the authorities expressly vested in them ought to be exercised.

These powers, if steadily and regularly exercised, would probably have been sufficient to secure a good management of the Museum by the principal librarian and the subordinate officers appointed to assist him in the execution of his duty.

But their legitimate powers could not be steadily and regularly exercised by a body so numerous, or the majority of them, or even by a general meeting consisting of seven trustees, as allowed by the act 27 Geo. III., c. 16.

The appointment of what has been called a standing committee must have been very soon found to be necessary. No mention is made of it in the rules of 1757 (Appendix, No. 9, p. 1), but in the orders and rules

'of a more private nature' which were made in 1768 (*Ib.* p. 5), the standing committee seems to be spoken of as a thing established, its powers, and certain rules for its proceedings, are stated.

No provision was made for the constant and regular attendance of the same trustees for any length of time, or even at any two consecutive meetings; and it was provided that all trustees at any time coming to the committee, should be of the committee, and that any three should be a quorum.

On reading the evidence taken by the Commissioners, it appears that many and considerable inconveniences have crept into the management of the Museum; and it seems probable that those inconveniences may, for the most part, be traced to a departure from the principles which were intended to be established when the institution was founded; but whether that can be done or not, the remedy must, as it seems, be sought for,

I. In the establishment of, or revival of an executive government, vested in one person solely responsible for the due execution of his duty, but assisted by a Council to whom he might readily and on all occasions resort for advice and assistance.

II. In the establishment of a Committee of Trustees, a standing committee, elected and undertaking personally to perform all those duties of superintendence, investigation, and control, which seem to be the proper and peculiar duties of the Trustees, as distinguished from the duties of practical management and executive government, which seem to be the proper and peculiar duties of a Governor or Director.

III. In providing better for the patronage or power of appointing all officers and servants.

The details of a scheme of management cannot be finally settled or recommended, without further investigation, and a fuller and clearer statement than has yet been made of the objects which are intended to be secured by means of the institution.

But in the mean time it may be of some use to state, for the purposes of consideration and discussion, the general outlines of a scheme, the applicability of which may be inquired into and tested in the progress of the investigations which are now taking place.

In the following suggestions, minute details have been purposely avoided. They are not proposed or in any way recommended for adoption; but stated only as aids to consideration and discussion in a matter of some complication; and with a view to mark the distinction between the powers and duties of the Trustees, and the power and duties of the Officers.

I. 1. The Principal Librarian might be Governor and Director of the Museum, the head of the executive department, responsible to the Trustees, but authorized to enforce the observance of all general rules established by the Trustees for the regulation of the establishment, and of every department therein.

I. 2. He might be enabled to ask the advice and assistance of the Heads of Departments in all matters relating to the execution of any part of his duty.

I. 3. He might keep a journal of his proceedings, and enter therein a note of all such matters as might be directed by the standing committee of Trustees.

I. 4. He might have under him and subject to his orders a secretary or Clerk, who might also act as Clerk to the standing committee of Trustees.

I. 5. The heads of Departments might be Counsellors of the Principal Librarian, and bound either together or severally, to give him such assistance as he might ask at their hands in any matter relating to the execution of any part of his duty.

I. 6. They might be subject to the orders and directions of the Principal Librarian in all matters which relate to the execution or performance of the general rules and orders established by the Trustees.

I. 7. Each Head of a Department might (subject to such general rules and orders) have the general management of his own department and be responsible for it.

II. 1. A general meeting of the Trustees might be held annually for the purpose of electing a Standing Committee of Trustees for the ensuing year.

II. 2. The members of the Standing Committee might be chosen from among the elected Trustees.

II. 3. The Standing Committee might consist of [four or five] Trustees, three of whom might be a quorum.

II. 4. It might be provided that no Trustee should be chosen a member of the Standing Committee unless he would first undertake to attend regularly to the business, unless hindered by some sufficient lawful occasion.

[It should be observed that it is a working and not an amateur Committee which is wanting, and the allowance of a small payment to each member of the Standing Committee, for every attendance upon a meeting of the Committee at the Museum, might not be objectionable.]

II. 5. The Standing Committee might meet at the Museum at least once in every fortnight.

II. 6. Any Trustee might be at liberty to be present at the meetings of the Standing Committee; but no Trustee (not a member of the Committee) need be allowed to have any vote in the transaction of the business of such Committee.

II. 7. The Principal Librarian might attend the meetings of the Standing Committee, and have a seat at the board, unless the members of the Committee should, on some special occasions, and for special reasons, request him to withdraw during their deliberations.

II. 8. The Standing Committee might have authority to call general meetings of the Trustees on any occasion which might seem to require greater authority than had been committed to them.

II. 9. Quere if it might not be expedient to enable the Trustees to elect from among themselves a certain number of Trustees, to be called by some such name as consulting or advising Trustees, consisting of Trustees distinguished for special or superior attainments in particular branches of knowledge, and for that reason capable of occasionally giving most valuable assistance to the Standing Committee,—and—

II. 10. At the same time enabling and recommending the Standing Committee to ask the advice of, and to consult with such Trustees whenever it should be thought expedient to do so.

II. 11. The advice when given to be always entered in the minute-book, and reported to the next general

meeting of Trustees; but the Standing Committee not bound to act upon it.

I.—II.

1. Free communication, without form or ceremony, should be established between the Principal Librarian and the Heads of Departments; and, also, between the Principal Librarian and Heads of Departments on the one hand, and the Standing Committee on the other. Reports to be made verbally, or in writing, according to the nature and circumstances of each case; but always in writing when required by the Standing Committee, or the Principal Librarian.

2. Wherever the business of a particular department is under the consideration of the Standing Committee, and in the absence of any special reason to the contrary, the Head of the Department should be present and allowed to state his opinion and advice before the adoption of any resolution on the subject.

III.

1. The Principal Librarian and the Heads of Departments might be appointed by her Majesty, subject to suspension by the Standing Committee, and to removal by the Trustees at a general meeting.

2. The subordinate officers in each department might be appointed by the Head of the Department, with the approbation of the Standing Committee, subject to suspension by the Principal Librarian, and to removal by the Standing Committee.

3. The servants, workmen, &c. employed exclusively

in any department, might be appointed by the Head of the Department, subject to suspension by himself, and to removal by the Principal Librarian.

4. The Principal Librarian might appoint or remove the clerk or secretary with the approbation of the Standing Committee, and might have the appointment and removal of all other servants, workmen, &c., employed in the establishment."

In July following the Chairman drew up a draft report, which was privately printed for the use of the Commissioners only, and a copy was confidentially sent to each for his suggestions. Lord Langdale's other occupations preventing him from attending the meetings of the Commissioners to discuss its various heads, he sent instead some notes on the papers to Lord Ellesmere. These notes, though like everything else that he wrote, exhibiting undeniable proof of Lord Langdale's close analysis of any subject that occupied his attention, could hardly be understood without the reader having both the draft and the printed Report before him. It may, therefore, be sufficient to quote what he says on the question of the Catalogue of Printed Books:

P. 15.—"Considering how much investigation has taken place, and how much is said about the catalogue of printed books, it appears to me that a decided opinion ought to be expressed upon the question, whether the catalogue ought to be an alphabetical catalogue, with alphabetical index of subjects, or what is called a class catalogue.

A full and accurate alphabetical catalogue, with sufficient cross references, and a full and accurate alpha-

betical index of subjects, may be so constructed as to be of easy reference and universal use.

I conceive that there are incontrovertible reasons why a classed catalogue (in the sense usually given to that expression) cannot be satisfactorily made: if made at all, it could not be for all time, or for any great length of time; as Mr. Baber says, (App. 10, p. 11) it would not be extensively useful or frequently consulted.

And considering what was done by the Royal Society with reference to the catalogue of their own books, it does not seem to be expedient to refer any such question to that learned body.

A good alphabetical catalogue, with a good index of subjects, would furnish a safe foundation upon which might be constructed separate catalogues of particular portions of the library, or of particular classes of books, according to any system of classification which it might be desirable to adopt at any time."

Lord Ellesmere the same day acknowledged with many obligations Lord Langdale's memoranda, and promised that they should all be attended to. In the beginning of August, Lord Langdale received the following memorandum, dated 30th July, from the Secretary of the Commission, sent by direction of the Earl of Ellesmere, together with a revised copy of a portion of the intended Report of the Commissioners.

July 30th, 1849.

"It has been found impossible to prepare the Report of the British Museum Commission in time for presentation to her Majesty during the present Session of Parlia-

ment. The Chairman, much regretting the failure of his own endeavours, assisted as they have been most actively by many of his colleagues in this particular, wishes to avail himself of the opportunity it affords for further correction and completion. The draft of what is now in preparation will be circulated among the Members of the Commission. The Chairman will be greatly obliged, if any of the Commissioners will return it to him, with any remarks, and with the intimation of their permission, conditional or unconditional, qualified or unqualified, to consider it as having the sanction of their signature, addressed to him, 18, Belgrave Square, and marked B. M. C. on the cover.

The Chairman leaves England on the 6th of August, and expects to return early in September, when he hopes, if favoured with the assistance above requested, to be able to present the Report to Sir G. Grey.

[Sent by the direction of the Earl of Ellesmere,

J. Payne Collier,

Secretary.]

The Right Honourable Lord Langdale.

Soon after the receipt of the foregoing memorandum and revised Report, Lord Langdale left town for the summer vacation; and whilst he was in the country he saw by accident in the "Globe" newspaper of the 13th of August a pretended statement to the effect that a Report had been agreed on, and included certain suggestions, the particulars of which were given, and which were the identical propositions that Lord Langdale had drawn up and given to the Lord Advocate for the

use of the Commissioners. This circumstance led him to believe that his suggestions had been printed for the use of the Commissioners, and that a copy had improperly found its way to the "Observer" newspaper, from which the "Globe" had copied it; and he concluded that on his return home he should find a copy sent to him by the Commissioners.

On reaching Roehampton on the 17th of September, and not finding the paper in question, he wrote to Mr. Collier, the secretary, to inquire about it. Mr. Collier replied the next day, stating that he had received nothing from any of Her Majesty's Commissioners on the British Museum, that had not been instantly transmitted to his Lordship, and he intimated that he had forwarded nothing since the draft Report of fifty-one pages was sent, in the beginning of August, by command of the chairman, with the memorandum dated 30th July.

Lord Langdale, however, was not satisfied, and concluded that there was still some mistake, and that his own paper, which had evidently been printed for the use of the Commissioners, had, somehow or other, not reached him, for he felt quite sure that the Lord Advocate had not sent the suggestions in question to the newspaper, and, therefore, that his paper must have been printed.

Mr. Collier, however, wrote in reply, saying that his Lordship might feel assured that no document had come, or should come into his hands, relating to the Commission on the British Museum, without its instant transmission to his Lordship, and if there had been any irregularity,

he was not aware of it, and it did not arise with him.

Lord Langdale, however, feeling that some irregularity had been committed, which ought to be corrected, wrote the following letter to Lord Ellesmere:—

Roehampton, Sept. 26th, 1849.

"My dear Lord,

"Early in August last Mr. Collier sent to me, by your direction, a printed copy of a portion of the intended Report of the British Museum Commissioners.—It appears to be a new edition of the draft of that part of the Report which I had previously received,—and some short notes upon which I had taken the liberty of sending to your Lordship in July. Except these two papers (the draft as first framed, and the new edition), I have received no paper relating to the Report, since the evidence was closed. But whilst in the country, I saw, in the 'Globe' newspaper of Aug. 13th, a pretended statement (which I have since ascertained to have been copied from the 'Observer' of the preceding day), to the effect that a report had been agreed on, and included certain suggestions, the particulars of which were stated. The statement was so clumsily made that it did not seem calculated to mislead any one. But I was surprised to find that the particulars set forth were a true statement of some suggestions of my own, of which I gave the only copy which was ever made to the Lord Advocate, for the use of the Commissioners.

The contents of the paper which I had duly received, and the true copy of my own suggestions for discussion,

though most erroneously pretended to be part of the Report, convince me that some other papers relating to the report, beside those which have been sent to me, have been circulated for the use of the Commissioners. On my return to this place I wrote to Mr. Collier, who assures me that he has received for circulation no papers relating to the Report, except the two which were sent to me, and to which I have referred; and that if any irregularity has taken place, it has not been his.

I hazard no conjecture as to the means by which any paper, which ought to have been kept strictly private, found its way into the newspaper; but the circumstances which I have stated, and the interest which I take in the subject of the Report, induce me to hope that your Lordship will excuse me for asking you to give directions that copies of all the papers relating to the Report which have been printed for the use of the Commissioners, may be sent to me.

I have the honour to be your Lordship's faithful and obedient servant, LANGDALE."

To this Lord Ellesmere wrote to say that he did not believe that any papers have been yet in circulation other than those Lord Langdale admitted to have received. Lord Ellesmere intimated that he had not seen any print of Lord Langdale's memoranda, and suggested that the pseudo-report which appeared in the newspapers might have been taken from some purloined fragments of the various papers which had been printed for the convenience of the Commissioners.

Lord Langdale replied, thanking Lord Ellesmere for

the trouble he had taken to explain the matter, and forwarded some short notes on a paper that he had recently received, "Department of Printed Books," many of the suggestions in which were embodied by the Commissioners in their Report.

The Report was completed and laid before Parliament in April, 1850, but Lord Langdale's name is not appended thereto. He refused to sign it, not because he was not fully acquainted with the evidence on which it was founded, for I have already stated that I have seen and carefully examined his digest and analysis of it, but because an opportunity had not been afforded to him of discussing every portion of the Report. And although he agreed to the portions relative to the management of the library, yet he had objections which he should have wished to discuss relative to the future schemes for the management of the Museum in general, and he was especially adverse to keeping the whole of the Natural History branch there.

Lord Langdale, speaking of his refusal to sign the Report, said, that the first opportunity which should be afforded to him in the House of Lords, he should feel it incumbent on him to state publicly what his reasons were for declining to do so, and this was a duty he owed to himself and the officers of the Museum, who had been attacked, and of whose zeal, efficiency, and exertions for the public good, he could not speak in too high terms of praise and commendation.

He thought, as a whole, that the British Museum was admirably managed, and conferred more honour on the nation than any other of her public institutions.

CHAPTER XIV.

THE REGISTRATION QUESTION.—EARLY ACTS ON THE SUBJECT.—SELECT COMMITTEE OF 1832.—MR. BICKERSTETH'S EVIDENCE.—LORD LANGDALE IS PLACED AT THE HEAD OF THE REGISTRATION AND CONVEYANCING COMMISSION.—THEIR REPORT ON REGISTRATION.

THE expediency of providing a system of registration of assurances affecting land in this country has long engaged public attention; indeed for upwards of three centuries the minds of men have been more or less occupied with the subject.*

The earliest act which directly enforced the registration of deeds affecting lands was passed in the year 1535.

In the year 1617, Sir Francis Bacon being then Lord Keeper, King James I. issued letters patent creating "The office of General Remembrancer of Matters of Record," the object of which seems to have been to assist purchasers and others in their searches, by establishing a central office in the metropolis, where the necessary information as to all matters of record likely to affect

* The reader interested in the History of Registration in England, will find an elaborate paper on the subject by G. W. Sanders, Esq. Secretary to the Commission, as Appendix VI. to the first Report of the Commissioners. There is also appended to the same Report another paper by Mr. Sanders, on Registration in Belgium.

them might be obtained at once, instead of leaving them to explore the various offices or places throughout the country in which such matters then lay scattered. It does not seem to have contemplated the removal of the Records themselves to London, nor does it seem to have had for its object the compulsory enrolment of deeds and other matters which were not then subject by law to enrolment. The document, however, is of considerable importance, as affording evidence that so early as the reign of King James I. the want of a central office for the convenience of search was felt.

During the interregnum the subject of registration was frequently brought before the Parliament; and after the Restoration, in the year 1669, a Committee of the House of Lords recommended that there should be a Bill of Registers for the future, and some steps were taken on the occasion, though nothing was effected on the subject.

In 1703 the act of the 2nd and 3rd Anne, c. 4, passed for establishing a Registry in the West Riding of the county of York, and in 1707, the act of the 6th Anne, c. 35, extended the benefit of registration both to the East and West Riding; in the subsequent year the county of Middlesex was added to those places * where the law of registration prevailed, and in 1735 the North Riding of Yorkshire was admitted to the number of the register counties.†

Since the passing of the act of 1735 no further portion of England has been brought within the requirements of any law for registration; endeavours have

* Stat. 7 Anne. c. 20. † Stat. 8 Geo. II. c. 7.

been made by other counties to procure local registers,* but without any favourable result.

The fact that particular districts had thus obtained or attempted to obtain a local registration, seems to have again awakened the attention of the Legislature to the necessity of providing one general system of registration for the whole of England; accordingly, on the 3rd of April, 1739, leave was given in the House of Commons to bring in a Bill for the public registering of all deeds, conveyances, wills, and other incumbrances, that should be made of, or that may affect any honours, manors, lands, tenements, or hereditaments, within that part of Great Britain called England, wherein public registers are not already appointed by Act of Parliament.

The Bill passed the House of Commons on the 21st of May following by a majority of ninety to twenty-six.

It was read a second time in the House of Lords on the 25th of May, and on the 5th of June it was committed to a Committee of the whole House; and the judges were ordered to attend. In the meantime, the clerks of the enrolments in Chancery, who had previously, but in vain, petitioned the House of Commons against it, preferred their petition to the House of Lords, praying to be heard by counsel, which was granted—witnesses were examined, and the Committee reported progress; and it was ordered that the judges do prepare and bring in a bill the next Session of Parliament. Two days afterwards the Parliament was prorogued.

A bill was accordingly brought into the Lords in the

* By Surrey in 1728; by Derby in 1732.

next Session, and was passed and was sent down to the Commons, but Parliament was prorogued before the Commons had time to pass the bill into a law.

The subject of registration does not appear to have again attracted the attention of the Legislature until the year 1758, when attempts were simultaneously made to introduce a general registry for England, and a local registry for Northumberland; and a bill was introduced into the House of Commons for the purpose, but it was lost on a division by a majority of *one*, the numbers being—Yeas, 34; Noes, 35.

A petition was presented to the House of Commons in February, 1784, for leave to bring in a bill for the public registering of all deeds, wills, &c., in the county of Northumberland, but the bill was never brought in.

Attempts were made in 1815 and 1816, but without success, to carry a measure for the public registering of all conveyances, wills, and incumbrances, that shall be made of, or that may affect any honours, manors, lands, or hereditaments within the several counties of England and Wales, except the counties of Middlesex and York.

The next advance in favour of registration resulted from the Second Report of the Real Property Commissioners published in 1830, arising out of the valuable suggestions by Mr. Tyrrell, and printed, though not published by him, early in the year 1829.

Not long after the appearance of Mr. Tyrrell's suggestions the consideration of the whole subject was brought still more closely under the notice of the professional public by the circulation of one hundred and sixty-four

questions on Registration by the Real Property Commissioners. Some of the questions are, perhaps, irrelevant, and others not very well directed; and the appearance of so great a number of queries, which were by some persons regarded as proofs of the doubtfulness, or at all events of the difficulties incident to registration, was far from creating, in the first instance, a favourable impression of the important measure of legal reform which the Commissioners had selected for the second grand division of their labours.

These questions produced a pamphlet from Mr. Coote, in which he showed himself a decided opponent of registration. This was followed by others from Mr. Walters, Mr. Hodgkin, and Mr. Wood, in answer to Mr. Coote's objections; and shortly afterwards Mr. Bellenden Ker and Mr. Humphry, brought forth their more expanded dissertations on the same side.

Not only professional persons but also landed proprietors now entered into the question of registration; and the controversy became so warm as to give rise to that celebrated article on the subject which appeared in the 101st number of the "Edinburgh Review."

This article, powerful as it is in favour of registration, did not have the effect of quelling all opposition to registration,—on the contrary, numerous meetings were convened, and a loud cry against it was raised by the legal Conservatives. However, many petitions in its favour were presented to the Houses of Parliament, in consequence of which leave was given on the 16th of December, 1830, to bring in a Bill for establishing a General

Register of all Deeds and Instruments affecting Real Property, but Parliament was dissolved before the Bill was read a second time.

The Bill was renewed in the Parliament which met in 1831, and the second reading was postponed till the 22nd of February, 1832; it was handed over to a Select Committee to inquire into the subject, and among the witnesses examined was Mr. Henry Bickersteth, who gave evidence on the 10th of April, 1832, and whose evidence has been declared to be a treasury of professional knowledge and legislative wisdom. Speaking on the subject of the objections which had been raised against registration—*viz.*, that by registration a man's necessities were made known to the world, he said—

"The subject may deserve consideration with reference to the party himself, with reference to his family, and with reference to other persons with whom he is dealing. With reference to the party himself, it is said to be very hard that all the world should know that he has charged his estate with a mortgage, and that his interest in the estate ostensibly is to that extent diminished. The truth is, that concealment is, in almost all cases, highly prejudicial to the party himself. Every one must have seen unfortunate cases where individuals, the owners of large estates, in receipt of the rents, and hoping to conceal the heavy incumbrances with which the estates are really charged, have thought that they could most successfully do so by maintaining a style of living and expense corresponding, not with the real state of their fortune, but with the value of the estates ostensibly theirs. Such persons are engaged in a con-

stant course of duplicity; they are always deceiving others—often themselves; and they go on recklessly spending money, and contracting fresh debts, till their means are exhausted, and their estates charged beyond the hope of redemption. An estate producing a rent of 10,000*l.* a-year, but charged with mortgages to the extent of 6000*l.*, is worth no more than 4000*l.* a-year to the owner; but if, as is too often the case, he has the foolish desire of concealing the mortgages, and the foolish vanity of maintaining what he calls his station in the world (meaning what would be his station if he had no mortgages) he will, as long as he can, go on living at the rate of 10,000*l.* a-year, aiding his reduced income by credit, and a succession of disgraceful shifts, till (every year involving him deeper) his 4000*l.* a-year is at length gone, and he has to depend upon his more prudent friends for the means of subsistence. It is not a system of registration that can prevent such vice and folly from occasionally happening; but I am persuaded many of such instances are wholly occasioned, and many more greatly encouraged, by the hope of concealment in the parties themselves, and by the actual concealment of the charges from others, who are induced to give credit to a man's style of living, without a sufficient regard to the means by which it is supported."

Mr. Bickersteth, after considering the subject with reference to the family of the party, proceeds—

"As an instance of the effect of disclosures between the owner of the land and the persons with whom he is dealing, I would take the case which is often proposed, of a banker dealing with customers. I would suppose (as

the objection implies) that the credit of the banker mainly depends on the belief which is entertained, that the land which is ostensibly his is free from settlement or incumbrance. If, notwithstanding this belief, the estate is subject to settlement or mortgage, the question is, whether that fact ought to be disclosed; whether the banker ought to be permitted to derive credit from land, which, although in his possession and ostensibly his, is really not his in full ownership, or for the full value. The supposed foundation of his credit being impaired, is the law to assist him in supporting a credit without foundation, by preventing the disclosure of facts so important to the customer? are the customers, who are so liable to be deceived, to be left under the delusions of a false credit, in order that the banker may have a chance, at their risk, of reinstating his affairs? Are they, under the sanction of the law, to be induced or permitted, for want of knowledge, to continue a credit which it is admitted they would withdraw if they were acquainted with the truth? There can be but one answer to these questions, and concealment in such cases is so mischievous and disgraceful, that I am sure that no honourable banker would ever desire it. The gentlemen whose answer to the Commissioners is found in the Appendix to their Report, have, as I conceive, very justly said, 'that more mischief arises in the mercantile world from false appearances of property, and erroneous impressions as to the real circumstances of parties than from any other cause whatever.' And it is clear that if the law enables the banker to conceal his settlements and mortgages, it enables him to lay a snare for his

customers, and do that sort of mischief which the law ought to be very diligent to prevent. On the whole, therefore, I cannot consider the disclosure which would result as an objection to registration. On the contrary, I think it would be a collateral benefit of very great value. At present, a man may be the ostensible owner of land, and yet have little interest in it: great mischief may, and frequently does, proceed from this source. Registration would enable you to know the real interest of the ostensible owner, to the great advantage of the community ; and, as I think, of the owner himself."

Speaking on the mode of registration, he said:—"On reading the outline of a plan which has been circulated by the Real Property Commissioners, I think it excellent as far as it goes; but I observe, with regret, that it contains no proposal for the registration of matters relating to pedigrees, nor any provision for the formation of maps, or of indexes of the names of estates and lands, and of their owners. It is justly said to be impossible to describe with ease and accuracy without a map; and it may with equal truth be said to be impossible to refer to the registry of an estate without a map and without an index, in which its name, or the name of its owner, is to be found. In forming the necessary indexes, it is to be considered that the land alone is that which remains fixed in geographical position from age to age; that the names of the lands and the roads, fences, and even houses, are not subject to any such swift or considerable changes as would make it difficult to indicate them on maps already

formed, and when once formed easily renewed from time to time, when a sufficient number of changes should render it necessary; and that though the owners of many lands are continually changing, yet that the changes, under a system of registration, would always be indicated by the register itself.

There can be no doubt that the due elaboration of a good plan and system will require great skill and knowledge, and very laborious and long-continued attention. This, therefore, in common with all other tasks which require the application of great knowledge and industry, is difficult; but I apprehend that the difficulty will not be thought insuperable by any mind habituated to contemplate difficulties with a view to overcome them. *Divide et impera:* let the subject be considered with reference to a small district, or with reference even to manors, the court-rolls of which have been kept imperfectly, and so entirely without regard to the main object now in view: make the district small enough, and it will be seen how easy it would be to make an accurate plan and list of every close of land it contains, with the name, form, and superficial contents of each —how easy, also, to record and render accessible, the evidence of all known facts affecting the title to each close. What in these respects is true of any one district, is true of every other, and of all the districts into which the whole country may be divided; and the regulations for making known the facts which ought to be known in relation to the matters in question, may be made as easily for the whole country as for any district within it."

The necessity for having a general registration of deeds for the simplification of the law of real property became obvious to the Government in the autumn of the year 1846, and Lord Langdale was requested by Lord John Russell, through the medium of the Lord Chancellor, to be the head of a Commission for that purpose, and also to name his fellow Commissioners himself. Though Lord Langdale considered registration as the one thing needful with a view to any reform in conveyancing, yet he hesitated and even declined to act in the proposed Commission, thinking that more good would be effected by a regular constituted and paid Board than by a body of unpaid Commissioners. By dint of persuasion, however, he consented to be the Chief Commissioner, but he left the choice of the rest to the Chancellor.

The Commission was accordingly issued on the 18th of February, 1847.

As in everything else that he undertook, Lord Langdale was indefatigable in his attention to the subject. To say that he was present at every meeting of the Commissioners, and took a most active part in their proceedings would be giving but a faint idea of what he really did: it was not his nature to be a passive Commissioner, or a mere spectator of what was going on; whatever he undertook, that he zealously and conscientiously performed.

Any one seeing him occupied in any one of his onerous duties, would have supposed that all his thoughts and all his time were devoted to that alone. In his Court, as Keeper-General of the Public Records, as

Trustee of the British Museum, as Chief Commissioner of Registration, the same remark would have been made, he was so entirely engrossed in the work before him, as to render it apparently impossible for him to have time or thought for anything else.

His labours under the Registration and Conveyancing Commission resulted in the presentation of a voluminous and learned report to her Majesty, on the labours of the Commission relating to registration, but he was prepared to enter upon the other branch of the subject referred to in the Commission, *viz.*, the simplification of the forms of conveyance, when illness and death overtook him. The surviving Commissioners are unhappy in having lost a colleague so admirably qualified to assist their labours and to bring them to a satisfactory conclusion.

CHAPTER XV.

LORD LANGDALE'S EVIDENCE BEFORE THE SELECT COMMITTEE OF THE HOUSE OF COMMONS ON FEES IN COURTS OF LAW AND EQUITY. — HIS STRONG OPINION AGAINST THE RECEIPT OF FEES.—THINKS A VIGILANT SUPERVISION OF PUBLIC OFFICERS NECESSARY.—RECOMMENDS THE APPOINTMENT OF A MINISTER OF JUSTICE.

On the 2nd of December, 1847, a Select Committee of the House of Commons was appointed to inquire into, and report to the House, on the taxation of suitors in the courts of law and equity, by the collection of fees, and of the amount thereof, and the mode of collection, and the appropriation of fees in the courts of law and equity, and in all inferior courts, and in the courts of special and general sessions in England and Wales, and in the Ecclesiastical courts, and courts of Admiralty; and as to the salaries and fees received by the officers of those courts, and whether any, and what, means could be adopted with a view of superintending and regulating the collection and appropriation thereof.

Before this Committee Lord Langdale was examined on the 7th of February, 1848; the substance of the principal points in the evidence he delivered on the occasion is as follows:—

"I have long been of opinion that the courts and offices of law, so far as they depend on the organization,

establishment, and management of officers, ought to be treated like every other important department of Government, and be paid by, and kept under the superintendence and control of Government; and that there is no more reason for charging the particular expense of judicial and legal services upon suitors, than there is for charging the expense of any other public services upon the particular persons who have occasion to apply to the Government for such services.

The legal department is amongst the most important branches of Government. This establishment is maintained for the benefit not only of the particular persons who require remedies for the wrongs they have endured, but also for the common benefit and security of all who live under the protection of the law. It does not seem to me to be expedient, or even just, to charge the particular individuals who already are in distress by reason of the insufficiency or inefficiency of the law and the conduct of wrong-doers, with the further expense of maintaining the establishment by which the law is to be declared, and the wrong-doers are to be prevented from pursuing their course of injury. I think, therefore, that it is the proper duty of the Government to pay those expenses. It seems to me quite wrong to make any addition which can be avoided to the suffering already occasioned by the inadequacy of the laws.

All judges, officers, and ministers should be paid by the public, and I think by salaries. What reason can be given why the suitors of the Court of Chancery should be charged with the salary of the Lord Chancellor, with the salaries of two Vice-Chancellors, with

the salaries of the Masters, and of various other officers? I conceive that all these are officers and ministers which the Government is bound to provide; they are employed in the most important public services, and I know no reason why the expense of them should be exclusively charged upon the suitors. All the salaries are not so charged. The salary of the Vice-Chancellor of England is paid out of the consolidated fund, so is that of the Master of the Rolls. When the Rolls estate was vested in the crown, the Government consented to an arrangement by which the Master of the Rolls ceased to have even a nominal interest in fees. I think all salaries ought to be in like manner paid by the public; and further, that compensation paid to persons for losses occasioned by reforms or improvements ought also to be paid by the public, for whose benefit the reforms are made. It frequently happens that for the purpose of correcting abuses, and putting an end to unnecessary expenses, it is necessary to make changes by which individuals without having committed any fault, or any fault of which they could be aware, may be subjected to great losses, and perhaps be deprived of the only employment to which they have been accustomed from early life. They have passed their lives within the view of those who seem at least to have sanctioned the practices which grew up; and when a reform is required and contemplated, and the known effect of it will be to deprive such persons as I have adverted to of their means of subsistence, I suppose that considerations of justice and mercy, and the interests of reform itself, will induce most men to conclude that a fair compensation ought to

be allowed: and if it be so concluded, should not the compensation be considered as the price paid for a public benefit—the benefit of that reform which your own sense of justice would not permit you to effect without paying the price? and should not the Government, which is the purchaser for the benefit of the public, discharge the purchase money? It is not thus, however, that compensations for losses occasioned by reforms in the Court of Chancery have been provided for. If grievances have had to be there remedied by reforms causing losses, and requiring compensations, it has been necessary to prolong at least the pecuniary part of the grievance, in order to work out the compensations.

I beg leave to mention the example of the late Six Clerks' Office. The constitution of that office was an undoubted grievance; not only a grievance in itself, but it stood as an effectual obstacle against any effectual reform in some of the other offices. It was most important to get rid of it; and, as I think, absolutely necessary to provide compensations for those whose emoluments, long sanctioned by acquiescent authority, were about to be taken away. The Government, however, would pay nothing, and would guarantee nothing, and, therefore, it became necessary to consider whether, for want of compensation, the intended reform should be abandoned, and the grievance left as it stood, or whether the compensation should be provided by a temporary pecuniary burden on the suitors, so that the suitors might have the immediate benefit of so much of the reform as did not consist of mere pecuniary relief, and might after an interval, and by slow degrees and successive steps, obtain

that full measure of relief which might have been obtained at once if this burden had not been imposed. Having been required to advise on that subject, I was then, as I am now, of opinion that it would be much wiser to continue for a time the expense (which I consider to be a grievance), and let the burden gradually wear away as the compensations fell in, than to abandon an important reform, and permit the grievance to remain indefinitely without effectual remedy. A great outcry was, naturally enough, made by those who did not thoroughly understand the subject; but there is reason to be well satisfied by the result. The business is transacted in the reformed offices with incomparably greater efficiency and satisfaction; the way to many other reforms is facilitated; the fees which are taken from the suitors in the reformed offices are already less by 11,000*l.* a-year than the amount of fees levied in the unreformed office; and the amount of the salaries paid to the new officers, of the large compensations paid to the old officers, and of other expenses, is already less by 5000*l.* a-year than the amount of the fees which were received by the old officers before the reform. Without affirming that the Act of Parliament provided the best mode of settling the compensations, and disapproving, as I do, of the compensations being charged on the suitors, I can have no doubt that the reform has resulted in great benefit to the suitors. If the compensations had been paid by the Government, that benefit would, of course, have been much greater."

He was of opinion that all the officers of the Court of Chancery, without exception, should be paid by salary

instead of by fees; and not only that no officers should be interested in any fee, *but that no fee at all should be received; for fees are in the nature of taxes.*

I have particularly called the reader's attention to this opinion, deliberately and solemnly pronounced before a Committee of the House of Commons, because his Lordship has lately been unjustly charged with a desire to put a tax upon historical knowledge by the imposition of fees. This matter has been already explained when noticing that part of his life connected with the Public Records.

"But," continues his Lordship, "I have a greater objection to fees than I have to less disguised taxes, and more especially to fees in which the officers have an interest. I am fully persuaded that you cannot establish any system of fees in which the officers have an interest without leading to great abuses. There is no power by which you can prevent extortion in some shape or other, if you once allow officers to demand or to accept money for their own use: even good men have their weak moments, and, under some specious pretext, will be tempted to take something different, or something more than they ought to take; there will be something in the way of gratuity or civility-money, at first given as a token of gratitude, and accepted under a consciousness of desert, but, in time, advances are made from hints to demands, till at length those who want a prompt service hardly venture to abstain from offers, which ought never to be made or accepted. I believe there is no way of avoiding abuses which grow up in this way, except by putting an end to the reception of fees, at least

fees in which officers are interested, altogether. The great excuse made for paying officers by fees is, that you have no other way of stimulating them to diligent exertion; and, it must be admitted, that a man's pecuniary interest presses upon him so constantly and steadily throughout his whole life, that in the end it must have a very great and powerful influence. But it does not constitute the only motive to diligence; the love of character and honourable distinction, and the security acquired by good conduct, are not without their effect; and by encouraging those officers who conduct themselves well, I believe you may have a more powerful and wholesome stimulus than any that exists at present under the system of fees;—and, I may further observe, that a system of fees operates as a constant obstacle to progressive reforms which may in any manner interfere with the profit or revenue expected to be made by the officers."

He also stated that he thought the due efficiency of offices might be secured by an active and vigorous supervision of the officers—that in the gradation of offices, as a general rule, every subordinate ought to be, to a considerable extent, dependent upon his immediate superior; and that every superior ought, to a considerable extent, to be responsible for the conduct of his subordinates: that alone would have a very great effect in securing due diligence. If you want to prevent all spirit and energy, and all desire to obtain credit by good service, you have only to make every officer wholly independent of his superior; arrange matters so that by the course of the office every officer, unless he is guilty of some great

offence, shall without any diligence, or activity, or energy, be sure to rise in regular succession, you then have an effectual recipe for negligence and inefficient service.

He thought that the head of every office should attend to the merits, characters, and conduct of the individuals in that office; and advance them by degrees, or recommend them to advancement, according to their merit upon all occasions.

For the purpose of securing the efficiency of officers he thought that a superintendence over the officers, and the whole establishment, is continually wanted, by a proper person who may go about making inquiries and receiving information; and that there ought to be some persons connected with the Government who should have the superintendence of the Courts of Justice, just as Government ought to have and exercise the superintendence of all other departments where the most efficient and active service is required. Lord Tenterden once spoke of the Parliament, or of the Government, as *magnas inter opes inops*, and when we look at the vast resources of the Government, and the small and inadequate means of securing some things equally important to justice and legislation, there seems to be considerable truth in the expression. No steady and regular superintendence is exercised; no machinery for it is provided; the Courts of Justice are left very much to chance; they go on as well as they can. If a complaint is made, that complaint is investigated and dealt with probably in a satisfactory manner, so far as relates to that complaint; but there may be very many causes of

complaint, and no complainant, and no discovery, unless there be a vigilant superintendence, and an inquiry made by a proper authority. A cause of complaint detected, and even corrected, is not so fertile of reform as it might and ought to be. You want an office of Government in which the affairs of justice should be the particular object of attention. You want a person who can at all times be ready to apply himself to the investigation of all things relating to the conduct of officers of justice; and unless you have that, you are and must be without some of the benefits which the Government might well secure for the country.

He thought that in the absence of any Government officer, you might charge some one of the Judges of the Court of Chancery with the superintendence of the offices; he might have the assistance of a clerk, or some other person, perhaps the solicitor to the Suitors' Fund, but it should be some person under his direction, who should have the opportunity of going about and collecting all proper information, and making all inquiries that are necessary; and unless there be some single authority which by its position might have sufficient weight you would do but little; if you had several divided authorities you would have no effectual supervision.

He thought that such an officer might be called, without any prejudice to our usual habits, the Secretary of State for the affairs of Justice, and he might be charged with the whole superintendence over the establishment and organization of the Courts, their official arrangements, and everything belonging to them except matters judicial.

He thought the supervision of this officer should have in view two objects; the one, the discipline, management, and official arrangements of the legal and judicial departments; and the other, distinct from, though closely connected with, the first, the collecting and arranging of all that sort of information which is requisite to enable the Houses of Parliament to legislate with prudence and caution.

If such an officer should not be appointed, he thought that a judge, with such assistance as he required, might contrive that all business should be so recorded that there should be an accurate statement of all that was done, to the extent at least of enabling him, with the knowledge which he might always possess of the nature of the business, to see with tolerable accuracy what was from time to time doing in each office, and whether the duties were regularly performed, and the accounts were duly kept; and he would be in constant intercourse with the officers; and superintendence might go to a considerable extent, though by no means to that efficient extent that might be wished.

Speaking again on the subject of having a Secretary of State for the affairs of Justice, he said, "I must be allowed to say, that judges have not the leisure, and in my opinion are not the persons who ought to legislate even in matters of practice. Important general orders and regulations ought to be framed and sanctioned by another authority, after advising with the judges, and hearing from them all the suggestions which they have to make, or all the reasons that they have to offer; but it is not in their proper function to make the law, even

of practice; at present I know they are the only persons to do it, and upon whom Parliament has imposed the duty by giving the power. For the most part they have been willing to do what they can in performance of that duty, but it takes them away from their more proper business.

"I believe," he continued, "that you cannot work out a system of safe and rational law-reform without an authority of the kind of a Secretary of State for the affairs of Justice, who should have a superintendence over all the Courts, and every branch of the law; for everything connected with the law requires to be subjected to proper inquiry and authority, and everything which ought to be laid before Parliament should be laid before it regularly and officially, in order that it may usefully consider what may from time to time be proper to be done, and how best to do it. It is often necessary to distinguish and consider what ought never to be tried without enactment, and what ought rather to be attempted by cautious and vigilantly superintended experiment. Those who consider this subject most attentively will be best aware how difficult it is to make laws or establish rules of practice, how much information is required, and what precautions are to be used, and how necessary it is that Parliament should be constantly supplied with the fullest and most accurate information upon all those subjects which are required for making and improving laws upon a steady and safe principle. I conceive that Parliament has great need of the assistance of competent persons, whose whole attention should be devoted to this subject."

Lord Langdale felt so strongly the necessity of having a Minister of Justice, that I cannot do better than lay before the reader the heads of a paper he sketched on the subject shortly before his death:—

LORD KEEPER, MINISTER OF JUSTICE AND LEGISLATION.

1. To keep, use, and apply, the Great Seal.

2. To act as President of the Council in all matters not judicial.

3. To exercise a constant and vigilant superintendence over the state of the law, and the proceedings of the Courts; and for that purpose to maintain a constant correspondence with all Judges, Justices, and Officers of Justice, in relation to their several offices, duties, and acts.

4. To analyze, arrange, and register all letters and applications of an official character, or which relate to matters within the competency of the Lord Keeper.

5. To inquire into and ascertain the merits of all complaints made of neglect or irregularity in the administration of justice, and make such representation, or report thereon, as the occasion may require, for the redress of any grievance.

6. To superintend, and give provisional and temporary sanction to the general orders from time to time made by Courts of Justice, for the regulation of practice and pleading, for the alteration of fees, and for the employment and duties of ministerial officers.

7. To report quarterly to the Queen the state of the administration of Civil and Criminal Justice; the proceedings of the several Courts; the business therein

transacted; the new regulations made; any inconveniences which have occurred in the administration; what remedies have been suggested, and ought to be applied.

8. To execute all inquiries into the state of the law, or of any particular parts thereof, on the requisition of Government or of either House of Parliament.

9. To prepare all Bills brought into either House of Parliament with the sanction of Government; and to annex to the draft of every such Bill a statement of the reasons on which it is founded and intended to be promoted.

10. To prepare, or state his opinion upon, all Bills which may be referred to him for either of those purposes by either House of Parliament.

11. To regulate and fix the assizes and the rotation of Judges to attend the same, and also to inquire into and report upon the expediency of issuing Special Commissions when required. 3 & 4 Gul. IV. c. 71.

12. To keep a registry and account of all persons confined in prison, for debt or offences, before and after judgment or trial, with a short summary of each case.

13. To direct the Attorney or Solicitor-General to prosecute such offences as are to be prosecuted by the Government, and to file such informations in Courts of Equity, as he shall think fit to direct.

14. To give his advice to the Government on all applications for rank at the bar, or for offices in the Courts of Law and Equity.

15. To advise the Government upon, and be responsible for all legal appointments.

16. To inquire into and report upon the claims of Judges and Ministerial Officers of Justice, in consequence of infirmity or long service.

17. After communication with the Judges of the several Courts, and in concurrence with the Master of the Rolls, to make regulations for the preservation and use of the Records of the several Courts of Justice.

18. To receive and submit to the Queen all petitions for pardon and commutation of punishment.

19. After communication and consultation with the Judges, and with the Treasurers of the Inns of Court, to prepare and submit to Parliament such rules as he may think proper for the admission and discipline of barristers.

20. After communication and consultation with the Judges and the Chairman of the Incorporated Law Society, to prepare and submit to Parliament such rules and regulations as he may think proper for the admission and discipline of attorneys and solicitors. 1 Vict. c. 56.

21. To keep and make up an account of all the expenses incurred by the Government in the affairs of justice and legislation, and to prepare the estimates thereof for the future.

22. To keep a registry of all the acts and proceedings of the office.

CHAPTER XVI.

ILLNESS OF THE LORD CHANCELLOR.—SPEECH OF LORD LANGDALE ON THE SUBJECT.—THE CHANCELLORSHIP PRESSED ON LORD LANGDALE. —DECLINED BY HIM.—BECOMES DEPUTY SPEAKER OF THE HOUSE OF LORDS. — MEMOIR OF LORD COTTENHAM. — THE GREAT SEAL AGAIN PUT IN COMMISSION. — LORD LANDGALE CHIEF LORD COMMISSIONER. —RECORD OF THE SITTINGS OF THE COMMISSIONERS. — THE NEW CHANCELLOR.

On the 28th June, 1849, Lord Brougham, in offering an explanation to the House of Peers, of his reasons for moving for an account of the number of causes then standing ready for hearing in the Court of Chancery, said he hoped that the Lord Chancellor, whose indisposition he sincerely lamented, would not attend a day sooner than his friends and medical attendants thought advisable in his Court, where no inconvenience had accrued from his absence.

Lord Langdale, however, felt that great inconvenience had arisen, and immediately answered:—

"I cannot concur with my noble and learned friend in thinking that no inconvenience whatever arises from the absence of the Lord Chancellor from the Court of Chancery, from this House, and from the council of her Majesty. But as to the Court of Chancery, I believe that the inconvenience is much less than it is sometimes represented to be; and probably it is (from the state of

business) much less than it would have been on any former occasion. It cannot be proper, but, on the contrary, would be very wrong, to hurry or disturb the Lord Chancellor in any way. His recovery, which is so much desired, might be retarded, and the public would for a longer time be deprived of the benefit of his much valued services. I hope that there will be no occasion to provide any substitute; but if it should be unfortunately necessary, I trust I may be excused for expressing my opinion that it will not be necessary, for that reason, to deprive the Lord Chancellor entirely of his office, or even to appoint a commission. In the old time before the reign of Queen Elizabeth, when the Lord Chancellor was usually a bishop, and an active statesman and politician, when his absences were frequent, either on account of the business of his diocese, or from his employment on foreign embassies, or other public business, and when he must of course have been sometimes, as he may now be, disabled by indisposition, it was by no means uncommon to place the seal, with his consent, by the direction of the Crown, in the temporary possession of other persons, to be held and used for the Chancellor in his absence, and to be restored to him on his return or recovery. No change of Chancellor was thought necessary in consequence of his temporary absence or disability; the occasion was provided for by committing the seal to the temporary and vicarious custody of a Keeper of the Seal, appointed for the occasion.

But early in the reign of Queen Elizabeth,* the autho-

* 5 Eliz. c. 18.

rity of a Keeper of the Great Seal was declared to be equal to the authority of the Chancellor; and consistently with that enactment, two persons cannot be, one of them Chancellor and the other Keeper of the Great Seal at the same time. But still, as the authority of the Court of Chancery is vested in the person who holds the Great Seal—as the seal is held at the pleasure of the Crown—as the business attached to the seal ought not to suffer injurious interruption—as a temporary indisposition ought not to deprive the Crown and the public of the services of an experienced and valuable public servant for a longer time, or to a greater extent than is absolutely necessary, there seems to be no good reason why an easy provision should not be made for urgent occasions. If an occasion should occur in which (during a disability presumed temporary of the Lord Chancellor) the use of, or the authority given by possession of the Seal, were urgently required, and necessary for the public service, it appears to me that by the authority of the Queen, and with the consent of the Chancellor, a satisfactory arrangement might be made without a Commission, or any other than a temporary and conditional transfer of the Seal. I believe that in the profession of the law some person might be found so qualified, and so far trustworthy, that her Majesty, with the advice of her responsible advisers, including the Lord Chancellor, might properly intrust him with the temporary possession of the Seal for that particular occasion, or for a short limited time, and who, for the public service, and from respect to, and for the ease of, the Chancellor, would be willing (without salary or hope of

pension, without fee or reward of any kind, or any patronage) to receive the seal conditionally for the particular occasion, or for a short limited time, and who having used it for the occasion or the limited time, would, by the direction of her Majesty, restore it to the Lord Chancellor either immediately, or at the end of a week or a day. Upon an emergency such as I am contemplating, it is not necessary, nor is it becoming, to speculate upon a change of the Chancellor; provision for an emergency is not perhaps quite so easy to make as before the statute of Elizabeth, but still it is practicable without any considerable inconvenience. By the authority of her Majesty, and with the consent of the Lord Chancellor, there may be temporary and vicarious possession of the seal, giving to the holder, for the time being, authority to exercise the legal and administrative, though not the political duties of the Chancellor."

This speech gave some offence to the Lord Chancellor, though for what reason it is difficult to say. He was evidently very sensitive about his illness, and wrote to Lord Langdale to assure him that he was almost well; he also took the opportunity to say that he disagreed with the opinion which Lord Langdale had expressed about the vicarious custody of the Great Seal, and that it must have been confined to the ministerial and not to the judicial duties of the Chancellor. There is no question, however, that Lord Langdale was perfectly correct in his opinion, and the Chancellor entirely wrong.

Shortly afterwards Lord Langdale waited on the Chancellor, who was much better and in good spirits, though looking very thin, and gave him several re-

ferences from the Catalogue of the Lord Chancellors in proof of his assertion, with which the Chancellor seemed more satisfied.

The long vacation appeared to restore the Chancellor's health for a time, but he did not enjoy the amendment long—indeed it was evident that his constitution was fast breaking up, and that it would be impossible for him to continue to hold the Seals much longer, and his resignation was daily expected: the consequence of this was, that all manner of reports were circulated, and among them was one that Lord Langdale was to be forthwith appointed Lord Chancellor. Upon hearing this he said, on the 12th November,—"Lord John must be persuasive, indeed, to be able to induce me to take the Seals; I should certainly refuse them if they should be offered to me, unless they were accompanied with an assurance that the Government would support me in my plan to divide the office of Chancellor."

Lord Cottenham's health did not improve, but he did not feel any inclination to resign his office as long as there was any possibility of his holding it; meanwhile the report became even more current than before that Lord Langdale was to have the custody of the Great Seal; and it was even said that it had been offered to him, and had been refused: upon which Lord Lyndhurst wrote the following letter to him :—

"My dear Langdale,

"I am told that nothing will induce you to accept the Great Seal: I do not believe it. You are not a man to prefer your ease and private interest to that of the

public. There is no person as Chancellor so well calculated to complete the reforms of the Court, every day becoming more necessary and urgent, as yourself. There is no object of more importance to the public welfare, or which, when accomplished, will redound more to the credit and honour of him by whom this great good shall be effected. Consider this well, and weigh it in all its bearings. Your sincere friend,

(blind as a mole),

LYNDHURST.

Turville Park, April 5th."

To this kind note he immediately returned the following answer :—

April 8th, 1850.

"MY DEAR LORD LYNDHURST,

"I have received your kind and too flattering letter at a time little calculated to encourage dreams of ambition, whilst suffering under a rather severe attack of gout.

Bearing in mind, as I always do, that it was from your spontaneous favour that I received the first step in the profession—a step which no other would have given me; and without which I must have remained in the position in which you first saw me, I always consider myself indebted to you for my subsequent progress, and, in some sort, accountable to you for the use which I ought to make of it.

I would willingly open to you my whole mind on the subject on which you write, but sparing you that infliction, I wish to say that whatever may have been said

about my refusing the Great Seal, it would be mere impertinence for me to speak of it, as I have never had and have not now the least reason to think that it will ever be offered to me. Lord Brougham, by putting possible cases last year, and again lately, led me to say what he probably reported to you, that nothing would induce me to accept it: but this is all. Your note makes me wish to explain a little. I think that there is more reason than ever for vigorous and careful reforms in Chancery, especially as the desire for change grows predominant, and seems to become very rash; it will ultimately prevail; and, if not carefully guided, will very likely, with the evils, sweep away many of the most important advantages which the Court has hitherto secured to the country. The subject will not bear neglect; but I do not see how that which is required to be done can be done by any Chancellor, or by any one whose mind is stretched to its utmost power of useful exertion, by the performance of his ordinary official duties. I am, indeed, not less convinced now than I was in 1836, that a change in the office of Chancellor is absolutely necessary not only for the complete and satisfactory reform of the Court of Chancery, but generally for the reform of the law, and for the improvement of our mode and system of legislation.

I cannot propose to trespass on your time, or that of your lectrice, so far as would be necessary to explain my views at length,—they vary very little from those I stated to the House of Lords in 1836.

And after much reflection I have come to the conclusion that it would require the greatest possible self-delu-

sion to induce any man to accept the office of Chancellor upon the notion that he could in that character accomplish the work which is now required. I hope the blindness which I deeply lament is approaching to a state which may admit of remedy, and that you only await the proper opportunity.

L."

The Lord Chancellor still continuing indisposed, the Lords Denman and Campbell were appointed Speakers of the House of Lords by her Majesty's Commission on the 18th of February, 1850; those noblemen being absent on the 21st of March, Lord Langdale was unanimously chosen Speaker *pro tempore;* he took his seat on the woolsack accordingly, and notified to the House that her Majesty had granted a Commission under the Great Seal appointing him Speaker of the House in the absence of the Lord Chancellor, and in the absence of the Lord Denman and the Lord Campbell, and the Commission having been read, Lord Langdale sat Speaker by virtue of the said Commission.

Though report had given the custody of the Great Seal to Lord Langdale, yet it is clear, from his letter to Lord Lyndhurst, that up to the 8th of April no offer had been made to him.

The Chancellor's continued indisposition placed the Government in an awkward position. They felt that it would be indecorous to press his resignation, though there was very little hope of his ever being able to resume his duties either in the House of Lords, the Cabinet, or the Court of Chancery; but the Chancellor

was very tenacious of office, and moreover did not like to receive any assistance in any of his functions. Hope led him on from day to day, but his intentions to recommence his duties were constantly frustrated, and he was obliged at last to succumb. He wrote to the Master of the Rolls, and requested his assistance,* and Lord Langdale promised to perform all the duties he could for him, and he immediately wrote to the Premier the following note:—

Rolls Court, Westminster, May 23rd, 1850.

"My dear Lord John,

"I am very sorry to learn from the Lord Chancellor that he finds himself unable to resume the performance of his duties on Monday next, as he expected.

The principal difficulty which occurs in making a temporary arrangement, seems to arise from want of a law Lord in the confidence of Government, to take charge of the Government law bills in the House of Lords. I presume that Lord Campbell, if he could undertake the task, would be in all respects satisfactory to you, and I am, therefore, induced to take the liberty of saying, that if he can attend sufficiently for the purpose, and my services should be thought acceptable to the House, I would willingly undertake to perform

* Lord Langdale called on the Chancellor on the 22nd of May, when the Chancellor told him that his physicians had unanimously agreed that if he attempted business again, it would certainly kill him: he had, therefore, written to Lord John Russell, requesting to see him, for the purpose of tendering his resignation.

all the formal business of Deputy Speaker during the Session, and so relieve Lord Campbell from every duty, except that which belongs to the law bills in which Government is interested, and enable him to arrange the times for their coming on, so far as is possible, in the manner most convenient to himself. I should be very glad to think that this offer would make it easier for you to secure the benefit of Lord Campbell's service in the present emergency.

I am, dear Lord John,

Your very faithful servant,

LANGDALE."

On the same day, however, Lord Cottenham sent in his resignation to the Cabinet, and dispatched a note to Lord Langdale, requesting to see him. At their interview Lord Cottenham told him that he had sent in his resignation of the Great Seal, and that Lord John Russell had said that it was impossible to go on with any temporary expedients, and that a Chancellor must be named; he then said that he had been requested by Lord John to ascertain whether he (Lord Langdale) would take it if it were offered to him.

"I think not," was the reply, "but I could not positively say." *

This answer the Lord Chancellor communicated to

* It seems from the following memoranda in Lord Langdale's note-book, that as early as the 16th of Dec. 1847, there was some rumour afloat of the probability of the Great Seal being offered to him :—

Lord John Russell, who immediately sent the following short note to Lord Langdale:—

May 25th, 1850.

"DEAR LORD LANGDALE,

"I shall be very glad if I can see you to-morrow, Sunday. Perhaps you would be so good as to come to Pembroke Lodge about four o'clock, or three, if you prefer it. Yours truly,

J. RUSSELL."

"Brougham returned with me from the Council Office, and, after some introduction, something like this conversation took place. It is in substance exact, though not always in the very words.

BROUGHAM. But you—what is to be done with you?

LANGDALE. Nothing.

BROUGHAM. Have you no views?

LANGDALE. None whatever.

BROUGHAM. But you are in a position to be thought of.

LANGDALE. It may be so; but I want nothing, and look for nothing. In short, if you wish to know it, I have made up my mind not to part with my present office, for any other in existence.

BROUGHAM. What, do you like it so much?

LANGDALE. I am content with it, and will neither part with it for any other, nor enter into the field of politics.

BROUGHAM. Oh! that's nothing! Cottenham makes nothing of politics.

LANGDALE. But I will take no office to which a political part is supposed to be attached.

BROUGHAM. And you have made up your mind?

LANGDALE. Yes, on this occasion out of all question; except that, as Master of the Rolls, it may be my duty to assist in any way I can in performing the duty of Chancellor for a limited time during the Chancellor's illness: for that purpose, I will do anything I can, without salary, or patronage, or anything else — provided no political duty is imposed upon me.

BROUGHAM. You mean by being Commissioner?

LANGDALE. I don't care how. There is more fuss than need be,

At this interview Lord John Russell, having obtained the Queen's sanction, made Lord Langdale the offer of the office of Lord Chancellor; and Lord Langdale having respectfully declined it, he was requested to reconsider the matter.

The following curious memorandum was the result of the reconsideration. It is written in his own hand, and was found among his papers after his death; a *fac*

or than used to be made in getting help for the Chancellor during occasional absence or illness. In old times (they are now very old), during occasional absence or illness of the Chancellor, the Seal used to be given to the Master of the Rolls, either alone, or with others, to hold for a few days till the Chancellor returned, or recovered, when it was given back to him.

BROUGHAM. What, without a Commission?

LANGDALE. Yes. The Chancellor never ceased to be Chancellor, though he had a Deputy-Keeper of the Great Seal for a short time.

BROUGHAM. That would be very convenient if it could be done without any great ceremony.

Here we came to the end of our journey, and I set him down in Grosvenor Square."

Lord Langdale was quite right in what he stated about the Master of the Rolls having always, either separately or jointly with others, the custody of the Great Seal during the temporary absences of the Chancellor. Some scores of instances of this fact may be seen in Hardy's List of Chancellors, &c.

In February, 1841, there was some talk of the Chancellor going into the country for a short time to recruit his health, and of putting the Great Seal into Commission, and Lord Langdale, I believe, told Lord Melbourne that there was no occasion for any thing of the sort; that appeals might stand over for a short time, and the Seal might be delivered to the Master of the Rolls to hold for the Chancellor, as in former times was always done when the Chancellor was ill or went abroad. Lord Melbourne intended to have followed Lord Langdale's suggestion, in case of necessity, but the Chancellor did not take the relaxation his health required.

simile has been made of it, as a specimen of his handwriting at that time.

CONTRA.	PRO.
Persuasion that no one can perform all the duties that are annexed to the office of Chancellor.	Salary 14,000*l.* instead of 7000*l.*
Certainly that I cannot.	Pension of 5000*l.* assured (instead of 3750*l.* not assured).
Unwilling to seem to undertake duties, some of which must (as I think) be necessarily neglected.	Patronage for benefit of connexions much needing it.
No reason to think that the extensive reform which I think necessary will meet with any support.	Some, though small and doubtful hope of effecting some further reform in Chancery.
No particular party zeal, and no capacity to acquire any.	
Declining health.	

Lord Cottenham did not live long after his resignation. He went abroad for his health. He died at Pietra Santa, in the Duchy of Lucca, on the 29th of April, 1851. He was the second son of Sir William Weller Pepys, Bart., a Master in Chancery, by Elizabeth, daughter of the Right Hon. William Dowdeswell, and was born on the 29th of April, 1781. He graduated from Trinity College, Cambridge, in 1803, as LL.B., and was admitted a member of Lincoln's Inn, on the 21st of January, 1801; he was called to the bar on the 23rd of November, 1804—having studied law under the great lawyer, Sir Samuel Romilly, and Mr. Tidd, justly celebrated for his legal works. He was made King's Counsel in Michaelmas Term, 1826; and Solicitor-General to Queen Adelaide in 1830. He was re-

turned to Parliament for Higham Ferrars in July, 1831, and in October following for Malton, which borough he represented in 1832 and 1835. He became Solicitor-General to the King in February, 1834, when the honour of knighthood was conferred upon him. On the death of Sir John Leach in September, 1834, the Mastership of the Rolls was conferred upon him, and he was made one of the Commissioners of the Great Seal in April, 1835, upon the return of the Whigs to office at that time. On the 16th of January following he was appointed Lord Chancellor, and was created a Peer of the realm on the 20th of the same month. He held the office of Lord Chancellor until the 3rd of September, 1841, when he was superseded by Lord Lyndhurst, who was for the third time made Chancellor. On the return of the Liberal party to power in July, 1846, Lord Cottenham became Chancellor a second time. His declining health rendered it advisable for him to resign the Great Seal in June, 1850, when he was raised to the rank of Earl. He married on the 30th of June, 1821, Caroline, daughter of William Wingfield, Esq., Master in Chancery, by whom he had sixteen children, twelve of whom survive him.

Lord Cottenham was not celebrated while at the bar, either for his brilliancy as an advocate, or for his achievements as a practitioner, but he was a successful Judge, or rather an excellent Judge in appeal cases; he made, however, but an indifferent one in original causes. He was cold and sedate in his manner, and seldom smiled or seemed pleased. His decisions were more remarkable for their sound common sense, than for legal

or subtle reasoning, and he had the rare faculty of stripping off all the technicalities of a case, and bringing it within the apprehension of the commonest understanding. He was very jealous of his authority, and never forgot anything like an interference with it. He adhered to the liberal side of politics, and gave great moral weight to the Government in his judicial character; but as a politician he was useless. He was not in his heart a true *law* reformer, and in more than one instance he was the cause of the miscarriage of important legal measures.

When he was promoted to the Great Seal, Lord Melbourne required from him a statement of his proposed Chancery Reform, as it was upon the express condition of his bringing forward a great measure on that subject, that he was advanced to the Chancellorship; Lord Melbourne had also obtained from Mr. Bickersteth, and Sir R. M. Rolfe, statements of their views of Chancery Reform. That of Mr. Bickersteth is given at page 424 of the first volume.

The following is Lord Cottenham's scheme, and upon it his Bills for the better administration of Justice in the Court of Chancery, and the Amendment of the Appellate Jurisdiction of the House of Lords and Privy Council, were founded.

"The duties of the Lord Chancellor consist of three distinct and independent branches:—

First,—His duties in the Court of Chancery.

Second,—His duties as Speaker of the House of Lords, to which are necessarily attached the duties of presiding in all the judicial functions of the House.

Third,—His duties as a Minister, which include the duty of general superintendence over all the judicial establishments of the country, and watching over and attending to all bills brought into the House which affect any of the laws or legal establishments, and all the other Ministerial duties of the Great Seal.

These several duties are obviously more than any one man can perform, not only in point of time and labour, but because the nature and great variety of the engagements materially interfere with the proper exercise of his judicial functions.

To effect a complete redress of all the evils which exist, it would be desirable—

First—To appoint a permanent Judge to be at the head of the Court of Chancery.

Second—To erect a permanent Court of Appeal to dispose of all the appeal business in the House of Lords, and in the Privy Council.

Third—To constitute an officer, who as Keeper of the Great Seal, but without any judicial function, would execute all the other duties of the Lord Chancellor, together with such others connected with the general superintendence of the judicial establishments of the country as it might be found expedient to entrust to him.

To effect this object to the extent of separating the Court of Chancery from the Great Seal, and appointing a permanent irremovable head of the Court, would not be attended with much difficulty.

The necessity of such a measure is very generally admitted; the state of business in the Court requires it, and such a measure would leave untouched the great

and much disputed question of separating the political from the judicial functions of the Great Seal.

If such a measure should be effected, some important considerations would be to be entertained, as to whether there should be an appeal within the Court itself, or whether the appeal should not be from each of the three branches of that Court to the House of Lords direct, except in certain interlocutory matters as to which there must be provided the means of immediate resort by way of appeal, to prevent fatal consequences in some instances of an erroneous order.

If the reform should for the present not intend to separate the other judicial functions of the Great Seal from its political and other duties, still some improvement in the manner in which the appeal business in the House of Lords is conducted, is absolutely necessary. In the Privy Council a great improvement would be effected by this change only, because the Lord Chancellor being released from the duties of the Court of Chancery would naturally assume the duty of constantly presiding in the Judicial Committee of the Privy Council, and the Court would thus obtain a regular judicial head, the want of which is at present its principal defect.

It has been proposed by some that the judicial business of the Privy Council should be transferred to the House of Lords, and by others, that the appeal business of the House of Lords should be transferred to the Judicial Committee of the Privy Council. This, however, appears to be making a great apparent change without any adequate object. If the same judge with the same assessors should preside in the House of Lords, and in

the Privy Council, the whole object would be attained, and the appearance of any violent change would be avoided.

The great difficulty is how to procure for the House of Lords proper assessors or assistants for the Chancellor in hearing appeals. The present Judges could not give the necessary attendance, and there ought to be one eminent in Common Law, and one eminent in Scotch Law. Three such men would, with the Chancellor for the time being, constitute an excellent Court of Appeal, but for this purpose a large expenditure would be required. Should this objection be insuperable, all that can be done will be to make certain of the Judges, all the Chiefs, and all the Equity Judges, and all Peers holding or having held judicial offices, a Committee to hear appeals, those who are not peers to give their opinion but not to vote; and to provide that the Chancellor and three others should be competent to act, and that this Committee might sit to hear Appeals during a prorogation. If the reform should be carried further, and the other judicial functions separated from the Great Seal, the head of this Committee of Appeal and of the judicial business of the Privy Council would be a permanent Judge, and this would, no doubt, be a great improvement; but it would leave the Keeper of the Great Seal with very important, but not very apparent, or even defined duties, and, in that case, the question would be whether such Keeper of the Seals should be a lawyer. The nature of his duties would make it desirable, but a lawyer of the description fit for the office would require a large provision, and a retiring pension,

and this with duties so little defined, and so little ostensible, would be scarcely practicable; but, on the other hand, if such a Keeper of the Great Seal should not be a lawyer, the office of Chancellor would, in appearance, at least, if not in effect, be annihilated, rather than divided, and for such a change the public, probably, are not at present prepared; whereas, if the separation of the Court of Chancery from the Great Seal should now be effected, and the constitution of the appellate jurisdiction improved, as suggested, though still under a removable Chancellor, the further most desirable alteration of making the head of the appellate jurisdiction irremovable, might, probably, after some little time be easily effected."

Between Lord Cottenham and Lord Langdale there was at one time a want of cordiality on the part of the former, arising perhaps, in the first instance, from the comparisons made between them on their several appointments by the daily press, and which were nearly all in favour of the latter; and Lord Langdale's speech in the House of Lords, on the second reading of the bill for the better administration of justice in the Court of Chancery, by no means made him feel more kindly disposed to the Master of the Rolls.

Lord Langdale often regretted it extremely, as the want of frank communication between them diminished the chance of carrying many Chancery Reforms. Upon Lord Cottenham's return to office in 1846, a great deal of his reserve towards Lord Langdale disappeared, and he became much more friendly and confidential in his manner.

Few men would have hesitated to accept the offer of the highest office any civilian can attain to; and had Lord John given a promise that the Government would undertake to effect a separation between the judicial and political functions of the Chancellor, Lord Langdale, notwithstanding impaired health, and an increasing desire for retirement, would have deemed it his duty to accept instead of declining the office. The Cabinet, however, not feeling itself strong enough to carry out such a measure, would not give a pledge, and his Lordship's conscientious spirit would not allow him to undertake duties which he had not the power to perform. If self urged him forward, conscience held him back, and he had the courage to refuse.

Immediately he arrived at this conclusion, he sent the following letter to Lord John Russell.

Rolls Court, May 27th, 1850.

"My dear Lord John,

"I have, as you requested, reconsidered the question which was the subject of our late conversation.

Though much gratified to learn that the measures which, as I think, can alone be effectual for the reform of the Court of Chancery, are likely to meet with the favourable consideration of Government, I own that I am unable to alter the resolution to which I had arrived.

I more than doubt whether any man can adequately perform the duties annexed to the office of Chancellor, but without venturing to say what any other might be able to do, I am sure that it would be impossible for me

to perform them, and the impression must be my excuse and justification for declining to accept so high an honour, and so flattering a proof of the confidence you are disposed to place in me.

Very truly yours,

LANGDALE."

Though Lord Langdale refused to accept the Lord Chancellorship,* he agreed, at Lord John Russell's earnest solicitation, to become the Chief Lord Commissioner of the Great Seal until the Government should be able to determine what steps to take in appointing a new Chancellor.

Sir Lancelot Shadwell,† Vice-Chancellor of England, and Sir Robert Monsey Rolfe, one of the Barons of the Exchequer, were appointed as his colleagues.

Thinking it may be interesting to the reader to have an account of the ceremonial of the creation of Lord Commissioners, I have ventured to lay before him the following official journal, kept by Mr. Sanders, at the desire of Lord Langdale, hoping it will answer the double purpose of amusement and *precedent.*

* Lord Langdale's refusal to take the Chancellorship gave considerable offence to the Cabinet—especially to one noble lord, who was "very angry, more angry indeed than he had a right to be, and laid it down as idleness." Lord Lyndhurst was also very urgent that Lord Langdale should take the Seal.

† Vice-Chancellor Wigram, I believe, was intended to have been named Commissioner instead of Vice-Chancellor Shadwell, but he was unfortunately unable to work on account of the affection in his eyes. Lord Langdale, however, wrote to the Chancellor, suggesting that Mr. Pemberton Leigh should be appointed, with a Peerage; but his politics the Chancellor thought were in the way.

"On the 19th of June, Lord Cottenham having delivered up the Great Seal to the Queen at Buckingham Palace, her Majesty immediately afterwards, and while it was in her own possession, ordered the Commission, which had been already made out, appointing Lord Langdale, Master of the Rolls, Sir Lancelot Shadwell, Vice-Chancellor of England, and Mr. Baron Rolfe, to be Lord Commissioners of the Great Seal, to be sealed with it. This having been done, her Majesty took the Seal into her hands, and in council delivered it to Lord Langdale as the First Commissioner. The two other Commissioners were present, and they all three knelt when the Great Seal was delivered, and afterwards kissed the Queen's hand; they were then sworn by the Clerk of the Council.

The Commission was in triplicate, and each Commissioner had a sealed copy delivered to him.

Some time elapsing in sealing the Commission,* it was inquired of Lord Langdale if there would be any objection to delivering the Seal to him before the Commission was sealed, so that the Queen might not be detained? Lord Langdale answered, that in his opinion it would be irregular to do so, and suggested that the unqualified delivery of the Great Seal to him would make him at

* It took so much time to seal the Commissions, that the Queen appeared impatient. As her Majesty was delivering the Seal to Lord Langdale, it separated (it being in two parts, and not properly fastened together), and nearly fell to the ground; upon which Her Majesty said, "It's very heavy." Every thing, on the occasion, seemed badly managed. There was no purse, or box, to put the Seal in, and Lord Langdale was obliged to take it away with him in brown paper.

once Lord Chancellor or Lord Keeper.* Accordingly he did not receive the Seal till the Commission was sealed.

Mr. Baron Rolfe, who was not a Privy Councillor, was not made one on the occasion, and therefore none of the Commissioners took a seat at the council table.

They went separately to the Palace, each being attended by his train-bearer only. In returning, Lord Langdale was also attended by the purse-bearer, who

* In 1792, when Chief Baron Sir James Eyre, Mr. Justice Ashurst and Mr. Justice Wilson, were appointed Lords Commissioners, a similar oversight was all but committed. His Majesty had signified his pleasure to hold a Council for that purpose, and upon notice being sent to the Commissioners, the Chief Baron sent to the Under Secretary of State, asking some question, which produced an inquiry, whether it was or was not necessary that the Commissions should be signed by his Majesty, and the Great Seal affixed to them previous to the delivery of the Great Seal into the hands of the Commissioners. The officers in the Secretary of State's Office entertained doubts on the subject, and sent to the Chief Baron for information. His Lordship was positively certain it was absolutely necessary that the Commissions should be signed and sealed previous to the delivery of the Great Seal, and as an authority, stated that the delivery of the Seal was postponed for two days on the appointment of Lord Loughborough, Sir W.H. Ashurst, and Sir Beaumont Hotham, in 1783, merely on account of a similar omission, notwithstanding their Lordships had been at St. James' to receive the same, and the custody of the Seal had been given up by the Chancellor. On receiving this information orders were immediately issued to the different clerks, directing every instrument necessary to the appointments to be prepared—the same were got ready before the King's return from Westminster, where he had been to prorogue the Parliament, which was about half-past three o'clock, when Lord Chancellor Thurlow resigned the Great Seal to his Majesty at St. James's, and the same was soon after delivered to Sir James Eyre, as First Lord Commissioner, in the presence of the two other Lords Commissioners.

had carried the purse for Lord Cottenham to the Palace, and whom Lord Langdale retained in the same situation.

They wore their long wigs and black silk gowns—the same costume as on a Levee. Their servants did not wear their state liveries.

No change was made in any of the officers of the Great Seal. Lord Cottenham's secretaries and officers were all retained.*

Thursday, the 20th of June.—The Lords Commissioners were sworn in Court, in Lincoln's Inn Hall: Lord Crowhurst, Clerk of the Crown, administered the oath; Master Dowdeswell, the senior Master (in his long wig), held the book. The Commissioners did not wear their long wigs.

Lord Langdale and Baron Rolfe then proceeded to hear Appeal motions; the Vice-Chancellor of England retiring into his own Court to proceed with the business thereof.

* The lay patronage of the Great Seal is held to be in the First Commissioner; in some of the more modern Acts of Parliament, the Lord Chancellor is in the Interpretation Clause, declared to be the First Commissioner of the Great Seal. No lay patronage fell in during the continuance of the Commission.

The ecclesiastical patronage is divided between the Commissioners in any manner agreed upon between themselves. Lord Langdale presented the Rev. Laurence Ottley to the Rectory of Richmond, in Yorkshire; Sir Lancelot Shadwell, his son, the Rev. Arthur Shadwell, to the Rectory of Langton, in Yorkshire. Mr. Baron Rolfe had the Rectory of Sharnford, in Leicestershire, allotted for his share of the patronage, but he did not present, preferring to leave it to Lord Truro, on an understanding that he was to receive from his Lordship a presentation to a living in Norfolk of equal value in exchange for it.

At one o'clock the Commissioners rose, and Lord Langdale went to the Queen's Drawing Room, at St. James's. He was attended by the chief Secretary at the Rolls, and his train-bearer, and wore his gold gown and gold waistcoat, and long wig. The Drawing-Room being held on the anniversary of Her Majesty's accession, and being considered in the nature of a Birth-day Drawing-Room, as no birth-day had been held, or was intended to be held during the season, the Secretary went in his black dress. Lord Langdale took neither the Seal nor the Mace to the Drawing-Room ; his servants wore their state liveries.

Lord Langdale took the Seal home with him every evening to his house at Roehampton, and brought it back with him every morning into Court. When he went to the House of Lords it was taken with him there, and left in his private room, his Lordship refusing to have it placed on the woolsack.

Friday, 21st June.—Lord Langdale acquainted the House of Lords that her Majesty had appointed him Speaker of the House, and Lord Denman and Campbell, Speakers in his absence; and moved that the commissions be read, and they were read accordingly. He wore his black silk gown and bands whenever he sat as Speaker under this commission, but he did not wear his wig. In entering the House he was attended by his train-bearer, and preceded by the Mace; but he would not allow the Purse to be carried before him.*

* Lord Langdale, on his appointment as First Commissioner became entitled to a new Purse for the Great Seal, and received one at the Rolls House on or soon after the 22nd of July, 1850. On the 13th of July, his Lordship and Baron Rolfe signed a warrant for pay-

His Lordship had previously acted, on several occasions, as Deputy-Speaker of the House of Lords, under a commission appointing him to act as such in the absence of the Lord Chancellor, Lord Denman, and Lord Campbell; but that commission was superseded by the one above-mentioned; and two others were made out,—one appointing Lord Denman to act in Lord Langdale's absence, and the other appointing Lord Campbell to act in the absence of Lord Langdale and Lord Denman.

When Lord Langdale sat as Deputy-Speaker under the previous commission, he wore neither robes nor wig, but he was preceded by the Mace.

Saturday, 22nd June.*—Sir Lancelot Shadwell and

ment of 70*l.* to Miss Fennell for the same. He afterwards lent the Purse to Lord Truro, till a new one could be made for him.

* The Lords Commissioners (before they actually received the Great Seal) caused returns to be made to them of the state of business in the Lord Chancellor's Court.

It appeared from the returns, that there were fourteen Appeal *Motions*—of which seven were from the V. C. of England, and five from V. C. Knight Bruce, and two from V. C. Wigram. There were none from the Master of the Rolls.

That there were nine Appeal *Petitions*—of which eight were from the V. C. of England, and one from V. C. Knight Bruce.

That there were sixty-two Re-hearings and Appeals—of which six were from the Master of the Rolls, sixteen from the V. C. of England, twenty-six from V. C. Knight Bruce, and fourteen from the V. C. Wigram.

That there were thirty-five Lunatic Petitions—of which nineteen were unopposed, and sixteen were opposed. And that besides these, there were thirteen which Lord Cottenham intended to dispose of before he delivered possession of the Seal.

And there were two original Charity Petitions under the 5 & 6 Will. IV. c. 76.

Under these circumstances, the Lords Commissioners determined

Baron Rolfe sat as Lords Commissioners in Lincoln's Inn Hall.

Lord Langdale, as First Commissioner, received from Mr. Lenox Conyngham, the Chief Clerk at the Foreign Office, an under suite cabinet key, No. 1, *i.e.*, a key that would open all the Government boxes, except the Cabinet boxes, his Lordship not being in the Cabinet.

Monday, 24th June.—Lord Langdale and Baron

to proceed first with the Appeal Motions, as being of the most pressing nature; and these were so arranged that Lord Langdale and Baron Rolfe were to hear those coming from V. C. Knight Bruce and V. C. Wigram. It so happened that the arrangement gave an equal number (seven) to each list.

In consequence, however, of the illness of the V. C. of England, Lord Langdale and Baron Rolfe heard the Appeal Motions from all the Vice-Chancellors indiscriminately, and had finished the whole, with the exception of the last, when the Great Seal was taken from them. They disposed of all which they heard.

Lord Langdale and Baron Rolfe also heard and disposed of the nineteen unopposed Lunatic Petitions.

They did not reach the Re-hearings and Appeals; but, by their order, separate papers had been made out of these, by which Lord Langdale and Baron Rolfe were to hear all those coming from the V. C. of England, and a due proportion of those coming from the two other Vice-Chancellors, and the V. C. of England and Baron Rolfe were to hear all those coming from the Master of the Rolls, and the remaining portion of those coming from the two other Vice-Chancellors. And in thus arranging the papers, the time of setting down the appeals was observed, so that they might come on according to their priority, as far as conveniently consisted with the proposed interchange of the Appellate Judges.

It was intended that the Lords Commissioners should sit four days a-week—that is, Lord Langdale and Baron Rolfe two days, and Sir L. Shadwell and Baron Rolfe the other two days.

The illness, however, of Sir L. Shadwell prevented this from being carried into effect.

Rolfe sat as Lords Commissioners in Lincoln's Inn Hall.

Sir Lancelot Shadwell was this day seized with a sudden and dangerous illness, which disqualified him from sitting again during the continuance of the commission.

Tuesday, 25th June, and Wednesday, 26th June.—Lord Langdale and Baron Rolfe sat as Lords Commissioners in Lincoln's Inn Hall.

Wednesday, 3rd July.—Lord Langdale went to the Queen's Levee, at St. James, to present the new Queen's Counsel, Mr. Peacock. Only three attended, Mr. Peacock, Mr. Carpenter Rowe, and Mr. Greeves.

Thursday, 4th July.—Lord Langdale and Baron Rolfe sat as Lords Commissioners in Lincoln's Inn Hall.

Friday, 5th July.—Lord Langdale and Baron Rolfe sat as Lords Commissioners in Lincoln's Inn Hall. They heard Lunatic Petitions for the first time.

The Queen's Sign Manual intrusting the Lords Commissioners with the care and custody of idiots and lunatics was dated the 19th of June, but was not received by Lord Langdale till some days after that date. It did not, like the Commission of the Great Seal, contain the words, "or any two of them."

Another Sign Manual authorizing the Lords Commissioners to pass grants depending, was about the same time received by Lord Langdale, though the date was the 19th of June.

Tuesday, 9th July, and Wednesday, 10th July.—Lord Langdale and Baron Rolfe sat as Lords Commissioners in Lincoln's Inn Hall.

Thursday, 11th July. — Lord Langdale and Baron Rolfe met in Lincoln's Inn Hall, to sit as Lords Commissioners. On his arrival Lord Langdale found a letter from Chief Justice Wilde, acquainting him that he (the Chief Justice) had been selected to be Chancellor. The Commissioners took their seats in Court, and finished hearing a part-heard case, but they did not commence any fresh business."

No announcement of the intended change was made by Government to the Lords Commissioners; but in the latter part of the day, letters arrived from the Clerk of the Council summoning the Lords Commissioners to attend a Council, on Saturday, the 13th, at Buckingham Palace, but not stating the reason for which their attendance was required.

Presuming, however, that the object was the delivering up the Great Seal, Lord Langdale wrote to Lord John Russell the following letter:—

House of Lords, 11th July, 1850.

"My dear Lord John,

"I learned this morning, from the 'Times' newspaper, that C. J. Wilde was appointed Chancellor, and since three o'clock I have received a summons to attend the Council on Saturday—I presume to deliver up the Seals, though the object is not stated.

The consequence of receiving such late notice is, that a few judgments are in arrear. It may be possible, though with difficulty, to deliver them on Saturday morning—and we shall certainly do so if required—but it would be greatly more convenient to deliver them on

Monday morning, and the new Chancellor, whom I have seen, is quite willing, if you think fit so to arrange.

Be so good as to tell me, as soon as you can, how it is to be. Very truly yours,

LANGDALE."

Lord Langdale heard nothing about delivering up the Seal till he was seated on the woolsack, when he received a note from Lord John Russell, offering a thousand apologies, and saying he had requested the Queen to hold a Council on Monday to receive the Seal.

" Monday, 15th July.—Lord Langdale and Mr. Baron Rolfe sat, for the last time, as Lords Commissioners in Lincoln's Inn Hall, and delivered all the judgments in arrear, six in number: Mr. Baron Rolfe commenced, and delivered four; and Lord Langdale followed, and delivered two. They then rose and left the Court about half-past eleven o'clock.

They afterwards attended the Council which was held at one o'clock at Buckingham Palace. They went separately, each wearing his long wig and black silk gown; Lord Langdale being attended by his train-bearer and the purse-bearer, and Baron Rolfe by his train-bearer.

The Vice-Chancellor of England continuing seriously unwell did not go. Lord Langdale delivered the Great Seal to the Queen, in her Closet, where her Majesty was alone with Prince Albert.*

* Lord Langdale said nothing could exceed the simplicity and grace of Her Majesty's manners on the occasion. There was no show of *condescension;* her dress was quite plain, and her voice most silvery and sweet.

By some inadvertence Baron Rolfe did not accompany Lord Langdale into the Closet, and was not present at the delivering up of the Great Seal.

The Queen delivered the Great Seal to the new Chancellor, not in the Closet, but in the Council Chamber.

Lord Langdale returned from the Council unattended by the purse-bearer, and the same day wrote to Lord Palmerston, acquainting him that he had delivered up the Chancellor's key, with which he had been intrusted, to the Lord Chancellor—Sir Thomas Wilde.

The new Chancellor was sworn in the next day in Lincoln's Inn Hall, and Lord Langdale attended, and held the book as Master of the Rolls."

CHAPTER XVII.

THE GORHAM CASE ARGUED BEFORE THE COMMITTEE OF PRIVY COUNCIL. —THE JUDGMENT DRAWN UP AND DELIVERED BY LORD LANGDALE. —UNJUSTIFIABLE COMMENTS THEREON.—EXTRACTS FROM LORD LANGDALE'S NOTES.

TOWARDS the close of Lord Langdale's life, it was his lot to have to adjudicate on one of the most important, and also one of the most painful cases which has been brought before a Court of Law in modern times—that of *Gorham* (Clerk) *against the Bishop of Exeter*—on appeal to her Majesty in Council from the judgment of Sir Herbert Jenner Fust in the Arches' Court of Canterbury, praying that her Majesty would be pleased to refer the appeal to the Judicial Committee of the Privy Council.

That remarkable case is too well known to render it necessary that any detailed explanation of the matter at issue should be given by me; but the prominent part which he took in its decision, and the unmerited reproach which has been cast upon his Lordship and his brother Judges by the disappointed party, for the advice which they felt it their duty to tender to their Sovereign as Supreme Governor of the Church of England, render it unavoidable that the great question then settled should be here con-

cisely stated, and should be accompanied with a few observations on that memorable occurrence in Lord Langdale's professional life.

The very important question at issue between the litigant parties, when stated rather in a popular than in a technical manner, may fairly be said to have been as follows. Whether a bishop has a right to impose on his clergy a test of orthodoxy, beyond *the distinct declaration of doctrine* contained in the Thirty-nine Articles of the Church of England, by requiring assent to *implications of doctrine* deduced from a few expressions of controverted meaning in the Liturgy; and, consequently, whether he can claim to exclude a clerk from a benefice, on his declining to admit the Diocesan's private interpretation of certain passages in the Formularies on the precise sense of which learned and pious divines have held conflicting opinions from the close of the reign of Elizabeth (possibly from the very commencement of the Reformation) to the present day. This, undoubtedly, was the one great question agitated between the contending parties, on appeal to the highest Court of Law, when stated in its general aspect. In its more particular form and circumstances, it was as follows. Mr. Gorham had been admitted, on the 6th of February, 1846, to the vicarage of St. Just-in Penwith, Cornwall, by the Bishop of Exeter, that living being in the gift of the Crown. He was presented by the same patron, in November, 1847, to the Vicarage of Brampford-Speke, Devonshire; but institution was refused, by the same Bishop, on the 21st of March, 1848, on the ground that after an examination of fifty-two hours Mr. Gorham had

declined to acknowledge on the requirement of the Bishop that it is the declared doctrine of the Church of England, that every infant duly baptized is, by the Sacrament of Baptism, invariably and unconditionally regenerated. Mr. Gorham sought redress in the Arches' Court of Canterbury by the only process open to him, that of a *Duplex Querela;* and monition, with intimation to the Bishop to show cause, was granted by the Official Principal of the Arches, on the 15th of June, 1848. Counsel were heard in the Spring of 1849; and a judgment adverse to the plaintiff was pronounced by the late Sir Herbert Jenner Fust on the 2nd of August of the same year, the Bishop being dismissed with costs. From that judgment, as was briefly stated above, Mr. Gorham appealed to the Queen in Council. The appeal came on for hearing on the 11th of December of the same year, before Lord Langdale as Master of the Rolls, Lord Campbell as Chancellor of the Duchy of Lancaster, Sir James Parke as one of the Barons of the Exchequer, Dr. Lushington as Judge of the Consistory Court of London, Sir J. L. Knight Bruce as Vice-Chancellor, and the Right Hon. Thomas Pemberton Leigh as Chancellor of the Duchy of Cornwall. The Archbishops of Canterbury and York, and the Bishop of London, were present as assessors by command of her Majesty. The arguments and the reply were continued for five days, (namely on the 11th, 12th, 14th, 17th, and 18th of December) and occupied twenty-seven hours, twelve of which were engaged by the counsel of the appellant, and fifteen by the counsel of the respondent. Judgment was deferred till the 8th of March, 1850; when it was pronounced in favour of the appellant, by reversal of the

judgment of the Court below, but without costs; and her Majesty was pleased to confirm this decision, in Council, on the following day.

The judgment is long, elaborate, and drawn up with great precision; while, at the same time, it is by no means deficient in gracefulness of style. It will well repay a careful perusal;* but a general outline of its contents will be sufficient in this place to render intelligible the very few observations which it is deemed necessary to make in connexion with Lord Langdale's name. It having been notorious that Lord Langdale took a leading part in this anxious decision, there can be no impropriety in stating that he was requested by the other members of the Judicial Committee to draw it up, from his own notes, from those of the other Judges, and from the communications which he received from the two Archbishops and the Bishop of London, as far as it was thought proper to adopt them. It then underwent the most careful review by every Member of the Privy Coun-

* It is reported, in "The Case of the Rev. G. C. Gorham, against the Bishop of Exeter, &c. by E. F. Moore, Esq., M.A., Barrister-at-Law," pp. 458—474. London, royal 8vo. 1852. In referring to this valuable volume, it may be well to notice one error in the report of the judgment, at p. 463, line 6; where, for "Arminian doctrines," read "the doctrine since known as Arminian." This correction is made from Lord Langdale's own copy. It is important, also, to observe, that the passage, "*In Baptism that is sealed and confirmed to infants which they had before,*" which appears immediately after a quotation from Bullinger, as if it were a dictum of the Judges, is, in fact, a second quotation from Bullinger ("Decades," p. 1007, col. 2, edit. Lond., 1587). The error arose from the omission of the inverted commas of quotation, in the copies printed for private circulation among the members of the Privy Council.

cil who was present at the hearing; was corrected by their suggestions; and was finally adopted by all of them, except the Vice-Chancellor Knight Bruce who dissented from it. The Archbishops of Canterbury and York, after perusing copies of it, expressed their approbation thereof; the Lord Bishop of London did not concur therein.

It begins by setting forth the facts of the case; complains of the laxity of the pleadings in the Court below; and then briefly states the doctrine which, as it appeared to the Judicial Committee, was held by the appellant. It takes up the position, that the question is simply whether those doctrines are repugnant to the doctrines which the Church requires to be held by its ministers, a question which must be decided by the Articles and the Liturgy, applying to their construction the rules which by law are applicable to the construction of all written instruments, taking into consideration only such external or historical facts as are necessary for understanding the subject-matter. It disclaims any intention to decide whether the opinions of the appellant are *theologically* sound or unsound; the question being simply a *legal* one. It proceeds to state, that a great variety of opinions respecting Baptism and other matters of doctrine, harassed the Church at the Reformation; that the Church did not attempt the determination of *all* those questions,—that, in selecting those points which it was intended to decide, regard was had to the most important, and upon which the members of the Church could agree—other questions being left to the private judgment of pious and conscientious persons, until de-

cided (if at some future time it should be deemed expedient) by competent authority. The disputed point is then carefully examined,—first with historical reference to the doctrine of Baptism declared in the *pre*-Reformation Articles of 1536, and the "King's Book," or "Necessary Doctrine," &c., of 1543: secondly, with relation to the present Articles of 1562 (which are admitted to constitute the CODE OF FAITH;) and to the Formularies in the Book of Common Prayer, which it is allowed being devotional exercises "cannot be held to be evidence of faith or of doctrine, without reference to the distinct declaration of doctrine in the Articles, and to the faith, hope, and charity by which the Formularies profess to be accompanied." The Judgment then notices the doctrinal opinions of several eminent writers, by whose piety, learning, and ability, the Church of England has been distinguished (quoting eight of them), who had been cited by the appellant's counsel, as holding doctrine similar to his own, and it declares, that—

"It appears that opinions, which we cannot in any important particular distinguish from those entertained by Mr. Gorham, have been propounded, and maintained, without censure or reproach, by many eminent and illustrious prelates and divines who have adorned the Church from the time when the Articles were first established. We do not affirm that the doctrines and opinions of Jewel, Hooker, Usher, Jeremy Taylor, Whitgift, Pearson, Carlton, Prideaux, and many others, can be received as evidence of the doctrine of the Church of England; but their conduct, unblamed and unques-

tioned as it was, proves, at least, the liberty which has been allowed of maintaining such doctrine."

With regard to the great question, whether the appellant's doctrine is contrary to that of the Church of England, and was, therefore, a just ground of refusal of institution by the Bishop, the Judges (with the one exception already mentioned), "unanimously agreed in opinion" as follows:—

"That the doctrine held by Mr. Gorham is not contrary or repugnant to the declared doctrine of the Church of England as by law established, and that Mr. Gorham ought not, by reason of the doctrine held by him, to have been refused admission to the Vicarage of Brampford Speke. We shall, therefore, humbly report to her Majesty that the sentence pronounced by the learned Judge of the Arches Court of Canterbury ought to be reversed," &c.

It was not to be expected that a judgment so important in its consequences, and so utterly subversive of the attempt of a party in the Church of England to abridge her comprehensiveness, could be given without exciting angry feelings. Indeed, even during the progress of the cause both in the lower and in the higher Court, for nearly a year and a-half before the pronunciation of the ultimate decision, violent exhibitions of party strife had exposed the Church to scandal, and had shocked the feelings of peaceful and moderate men. In the interval of nearly three months, which occurred between the close of the arguments on the Appeal and the decision of the Judges, the increasing apprehension, and, at length, the moral certainty of a decision fatal to the hopes of

the exclusionists, had drawn forth threats of a large secession to Rome, and even of a breaking up of the National Church. This hostile movement was so public and so violent as to render it impossible that the Judges should not be painfully cognizant of it; it required, therefore, the exercise of more than usual firmness, prudence, and charity, as well as of the gravest deliberation, that they might perform their arduous duty to their Queen, their Church, and their country, in a manner befitting their high trust. Lord Langdale has left behind him papers which show the deep anxiety he felt to give a just decision, and yet to occasion as little offence as practicable to the party to whom the sentence would be unfavourable. But the violence of party spirit is often beyond the control of the wisest and most amiable. All the moderate members of the Church of England (indeed constituting a large majority), whether agreeing or not in the exact shades of opinion which the Appellant had maintained, were well satisfied with this Judgment, as eminently equitable, and as well calculated to secure her peace and prosperity. But that section of the Church (unhappily not inconsiderable either in number or talent), by whose encouragement or instigation the Bishop of Exeter had attempted to enforce the acceptance of a dogma which the fathers of the Reformation had not imposed on the consciences of the clergy,—burst the barriers of decorous controversy, and vituperated the Judges who had pronounced this decision, in the most unscrupulous terms. Various bodies, associated by the name of "Church Unions," led on this unseemly attack; these were fol-

lowed by a host of angry pamphleteers and reviewers; and two misguided clergymen went to the length of denouncing (in their parish churches, on the Sabbath day, and in a formally executed document) the deliberate Judgment of the Privy Council, sanctioned by the sign-manual of the Queen. The most remarkable outbreak, however, against the Judicial Committee, and their two archiepiscopal assessors, was that of the Right Reverend Respondent himself, who addressed the Archbishop of Canterbury in a letter,* dated only twelve days after the delivery of the Judgment; which (to use the Bishop of Exeter's own language), "burst the bands of conventional decorum." † Had that letter confined its reproaches to the Archbishop, it would have been left unnoticed in these pages; but vituperating as it does all the members of the Judicial Committee who concurred in the decision, and reproaching, as it does, nominatim, *the Master of the Rolls*, ‡ it would be a dereliction of duty if as his Lordship's biographer I were to be silent on the language of invective and contempt in which his conduct and motives are there held up to public reprobation. It arrogantly assumes that "highly respectable common law Judges" do "not understand theological statements," and that "this illustrates their utter unfitness for the very responsible office" put upon them; that, in estimating the Appellant's doctrine, "one

* "Letter to the Archbishop of Canterbury from the Bishop of Exeter," March 20, 1851. 8vo. London.

† "The Bishop of Exeter's Pastoral Letter," April 9, 1851; p. 40. 8vo. London.

‡ *Ib.* p. 66.

set of words was substituted for another" (p. 53). The Judges are charged with a "suppression of the truth" (p. 59), with having "deceived themselves grossly" (p. 63); with having "wantonly, and in spite of warning, omitted to give attention to a conclusive Canon of the Church;" with having "decided in contempt of it;" with having been "guilty of a grievous violation of their plain duty—which duty is, to administer, not to make laws;" with having "listened to clamour from without, or timid caution from within" (pp. 64, 65). The beautifully luminous statement of the Judgment (which the reader has already learned, was originally sketched by the pen of Lord Langdale), is sneered at as "the argument *(if courtesy require us to call it by such a name)* of the Judicial Committee" (p. 67). It is unwarrantably affirmed that "the Act of Uniformity was utterly disregarded in the Judgment" (p. 71). It is recklessly and libellously declared, that the Judges "absolutely shut their eyes against the law, for, in this instance, nothing is seen of Justice but her bandage" (p. 78). The disappointed Bishop even ventures to "aver" his "belief, that other motives besides mere justice and truth, swayed this sentence;" that the Judicial Committee were "betrayed into a grievous perversion of justice;" and that they "tampered with justice," under the fear that "a large number of clergymen would be driven to resign their offices, perhaps to leave the Church" (p. 79).

That these reproachful imputations on Lord Langdale and his associated Judges, are nothing better than the intemperate invectives of an irritated litigant, mor-

tified at the check which his ambition, as the flattered champion of a violent party in the Church, had received from his Sovereign, guided by HER most eminent lawyers under the assistance of the two Archbishops—is so evident, that it would be a waste of words to dwell upon the subject. Even were a biographical volume the suitable place (which it certainly is *not*) for a theological exposure of the illiberality and absurdity of this outrageous attack on Lord Langdale and the other four members of the Judicial Committee, the vindication would be superfluous; since it has already been successfully accomplished by persons better qualified for such an undertaking * than I can pretend to be. Upon the mysterious doctrine which formed the subject-matter of this unhappy controversy, it would ill become me to express any opinion; when even the learned Judges themselves, who decided the *case*, cautiously abstained from any discussion of the theological accuracy of the conflicting views entertained by the parties before them, and which had been held without censure by some of the best members of the Church in by-gone times. Being attached to no party, I desire not to write a single word disrespectfully of the conscientious opinions of any body of men when maintained with charity. But, touching the monstrous allegation that profound lawyers were incompetent to "understand" the theological statements which they were required to examine

* The reader who desires to see a very complete reply to the charges mentioned above, may find it in "A Letter to the Bishop of Exeter, containing an Examination of his Letters to the Archbishop of Canterbury, by W. Goode, M.A., F.S.A., Rector of Allhallows the Great and Less." London, 8vo.

in connexion with the declared doctrines of the Church; and the serious charge that they were corruptly swayed by unjustifiable "motives" to give a decision in violation of the law, I feel that I am both qualified and bound to repudiate such an imputation with indignant amazement at its unparalleled illiberality.

Lord Langdale's copious and well-digested notes upon the subject now lie under my eye. These memoranda bear ample testimony to the deep anxiety with which he entered upon, and pursued the consideration of the very difficult question brought into the Appeal Court; the earnest attention with which he had listened to the arguments of the distinguished counsel employed by each party: the grave deliberation which he bestowed on the written suggestions of the Prelates who were commanded by her Majesty to assist her Privy Councillors by their theological information; the acuteness and the candour with which he reviewed the points to which his mind had thus (as well as by his own reading) been directed; the diligence with which he compared his own conclusions with those of his associate Judges; and the clearness of perception by which he was enabled to bring into one statement the perfectly consentient though somewhat differently expressed legal opinions of the five Privy Councillors who agreed in the Decision, and of the two Archbishops who assisted them in their difficult task as regarded the theological part of their inquiry.

Although the papers to which reference has just been made, if printed *in extenso*, would be eminently creditable to Lord Langdale, as exhibiting great theological discrimination, and inflexible equity in his exa-

mination into the declared doctrines of the Church of England, yet I do not consider that I should be justified in gratifying curiosity by subjecting the contents of Lord Langdale's portfolio to public criticism, on a matter which still keeps the Church in painful agitation. Those papers, though drawn up with great care and precision, did not receive the minutely verbal revision which, doubtless, would have been applied to them had Lord Langdale matured his written thoughts for the public eye; they were original materials for his own guidance, or suggestions to his brother Judges: as such, they possess a confidential and a sacred character, which must not be violated. It will not, however, be inconsistent with this avowal, to give two or three very brief extracts, with a view to illustrate the character and principles of the judgment which has been so rudely assailed by the party whose intolerance it restrained. These extracts will be followed by an "Historical Sketch of the Liturgy and Articles," which may, without impropriety, be presented to the reader, entire, in the exact state in which it was left by Lord Langdale; and which will show the great pains which he bestowed on that part of the case which has relation to the documentary annals of the Church of England from the period which just preceded the Reformation to that of the Restoration of Charles II., when the Ritual received its last revision.

One statement, however, in disparagement of Lord Langdale's reputation in this matter, must previously be noticed.

In a Pastoral Letter from the Bishop of Exeter to

his Clergy, dated April, 9th, 1850, and, therefore, written one year later than that to the Archbishop of Canterbury, above noticed, it is said:—

"One Article of our Creed, 'I acknowledge one Baptism for the remission of sins,' has been assailed from the very highest quarter which could be named—her Majesty in Council; not, thank God! of her own mind, but in accordance with the report of, and recommendation of, *the Judicial Committee* of the Council, two of the five who so reported not being known to be members of our Church. *This high authority has put forth a solemn adjudication that this Article of the Creed, if true, is not such a truth as a Minister of the Church may not deny, without thereby disqualifying himself from being admitted to the cure of souls,*" (pp. 67, 68).

Now it may be safely affirmed, that the memorable adjudication, in which Lord Langdale concurred does not contain one word to justify this serious and most reprehensible attack. On the contrary, the judgment of the Judicial Committee solemnly recognises the very article which the calumniator affirms that it "assails," for it expressly says "*One Baptism for the remission of sins is acknowledged by the Church.*" Lord Langdale was the last man to tamper with the *Credenda* of his Church. The judgment which he contributed to frame, does indeed permit a minister to deny *the private sense* in which an individual bishop may think fit to impose an Article of the Creed upon his conscience; but it does *not* dispense with the requirement of the Church, that her ministers shall

solemnly and *ex animo* declare their consent to her Articles and Formularies, without equivocation or reservation. The imputation is so grossly opposed to *fact*, that it may be dismissed without further notice, than the expression of regret that a bishop should have so grievously out-stepped the limits of decent controversy, and so lamentably forgotten the law of Christian charity.

A few extracts shall now be given from Lord Langdale's notes preparatory to the judgment.

One of the charges which has been most plausibly urged, and repeatedly asseverated, against the Judicial Committee is, that, being laymen, they presumed to intermeddle with the doctrines of the Church; a matter which (it is affirmed) belongs exclusively to her ministers. The charge is altogether without foundation; for the Judges expressly disavowed any intention to enter upon a theological discussion of the doctrines of the Church, or of the soundness or unsoundness of the opinions held by the appellant. They say,—

"The question which we have to decide, is, whether these opinions now under our consideration are contrary or repugnant to the doctrines which the Church of England, by its Articles, Formularies, and Rubrics requires to be held by its ministers." * "This Court, constituted for the purpose of advising her Majesty in matters which come within its competency, *has no jurisdiction or authority to settle matters of faith*, or to determine *what ought* in any particular *to be the doctrine* of the Church of England. Its duty extends only to the consideration of that which *is by law established to be the*

* See the Judgment, in Moore's Case, &c. p. 462.

doctrine of the Church of England, upon the true and legal construction of the Articles and Formularies;" * and Lord Langdale's papers show the extreme caution and scrupulosity with which he guarded his mind against confounding the office of the lawyer with that of the theologian—conscious that his simple duty was to examine, by the strict rules of legal inquiry, *what are* the declared doctrines of the Church as settled by her own Convocation, and established by Parliament. His notes are remarkably explicit on this point.

"The Question is a *purely* legal Question. As Sir Wm. Scott said, in the case of *Stone*,†—'It has been deemed expedient to the best interests of Christianity, that there should be an appointed Liturgy to which the office of public worship should conform; and, as to preaching, that it should be according to those doctrines which the State has adopted, as the natural Exposition of the Christian Faith. We must assume, and throughout the whole case proceed upon the assumption, that the doctrine of the Church of England, as by law established, is truly and correctly deduced from the Holy Scriptures; and that the Articles of the Church of England, either alone, or more or less qualified by the Liturgy, or the Rubrics, and Services, contained in the Book of Common Prayer, &c., do set forth the true doctrine of the Church of England, as by law established, "agreeable to the Word of God." ‡ And,

* See the Judgment, in Moore's Case, &c. p. 472.

† Haggard's Consist. Cases, i. 428. [See this quotation more at large in Mr. Turner's Argument, Moore's Case, &c. p. 216.]

‡ [Canon xxxvi. 3.]

applying the doctrine of the Sixth Article to the present subject, we may be allowed to say, that, whatsoever is not read in the Articles and Liturgy, nor may be proved thereby, even if it be rightly deducible from Holy Scripture, is not to be required of any man that he should accept it as an Article of the doctrine of the Church of England as by law established. It may be the truth of God, derived from Holy Scripture, and for that reason be, or be deemed to be, consistent with a doctrine of the Church, and yet not to be required by the Church to be accepted as doctrine necessary to make a minister "worthy of his ministry."* We have only to look at *the doctrine of the Church* AS BY LAW ESTABLISHED; and, therefore, the present case is to be determined according to the true construction which, upon mature deliberation ought to be put upon the Book of the Articles, and the Book of Common Prayer containing the Services, Formularies, and Rubrics."

The variety of opinions respecting Baptism and its efficacy, with which the Church was harassed, "from the first dawn of the Reformation until the final settlement of the Articles and Formularies," is slightly touched upon in the Judgment.† Lord Langdale carefully followed up the suggestions of counsel on this subject (especially those of Mr. Turner),‡ and diligently studied the matter with reference to its possible bearing on the declared doctrine of Baptism in the Articles and in the dogmatic portions of the Formularies. He enumerates those opinions as follows:—

* [Canon xxxix.]

‡ See Moore's Case, &c. p. 463.

‡ *Ib.* pp. 202—204.

"Some of the Questions raised concerning Baptism were to the following effect.

1. "Whether Baptism was anything more than a mark, or sign of admission into the society or congregation of Christian men?

2. "Whether, like the ceremony of circumcision among the Jews, it was the sealing or ratification of a species of Covenant by an outward and visible sign, which authorized us to claim, through God's mercy, the performance of His promises, and was a pledge to assure us thereof?

3. "Whether those who received Baptism received at the same time Regeneration *ex opere operato*, by the work then wrought?

4. "What was, or in what consisted the inward and spiritual grace, the grace of regeneration, of which Baptism was, or was intended to be, the outward and visible sign?

5. "What is the immediate effect of Baptism in the cases of, 1st. Adults having faith and repentance at the time? 2nd. Adults not having faith and repentance at the time, but afterwards requiring them?

6. "Does the efficacy of Baptism necessarily take place at once, or does it depend on the secret working of God in the progress of time, the time depending on his pleasure and the occasions of faith and repentance which arise, as foreseen by him?

7. "Is Baptism absolutely necessary to salvation; or has God absolutely excluded from salvation all who have not been baptized?

8. "Ought infants to be baptized?

9. "Infants being incompetent to have faith or repentance, ought they on that account to be excluded, or to be held qualified and capable of rightly receiving Baptism by the grace and mercy of God, enabling them immediately to receive remission of original sin, and enjoy the pledge, assurance, and prospect of the full performance of God's promises until competency arrives, when faith and repentance may be exercised, and the complete effect of that which commenced in Baptism may be obtained?

10. "Does the propriety or efficacy of Infant Baptism at all depend on the faith of the parents or sponsors, or those who bring the infant to be baptized; or upon their being offered in the faith of the Church (see the King's Book, 1543,*), or upon implied promises or prayer for grace in cases where all promises or prayers are, from the emergency of the occasion, permitted to be omitted?

"These and many other questions have been discussed, and were discussed before the doctrines of the Church of England were formally settled."

Among the insinuated charges against the Judicial Committee one of the most illiberal was (as has been briefly intimated above, p. 278) that they had garbled, misrepresented, or misquoted the appellant, in their account of his doctrine, with a view to render it less objectionable. This serious imputation professes to be supported by the following passage in the judgment: "What is signified by right reception is not determined by the Articles. Mr. Gorham says, that the expression

* [The "Necessary Doctrine and Erudition for any Christian Man," in Lloyd's "Formularies," p. 365.]

always means or implies a fit state to receive, *viz.* in the case of adults 'with faith and repentance,' and in the case of infants 'with God's grace and favour.'"*

"These words," says the accuser, "although quoted in the judgment as Mr. Gorham's, *I do not find in his answers;*" his judges have "substituted one set of words for another."† A candid reader would have clearly understood the expression ("says") as setting forth, by a conventional and by no means unusual term, only the purport of the appellant's answers, and not as necessarily giving their *ipsissima verba.* In fact, the Judges had previously declared, that "in considering the examination we must have regard to its *general scope*, object, and character;" and that "justice requires that an endeavour should be made to obtain the result which appears most consistent with the *general intention* of Mr. Gorham in the exposition of his doctrine and opinions."‡ It would seem, therefore, almost impossible that any honest mind could institute against five learned Judges a charge of misquotation, or of unfair substitution of words, by quibbling on an expression used in a popular, instead of an absolute sense. Lord Langdale's original notes, from which this passage in the judgment was doubtless prepared, place this matter beyond ambiguity. In these it is clear that the words, which the Bishop of Exeter maintains were "*substituted*" for words actually used, were simply intended to set forth

* See Moore's Case, &c. p. 466.

† Letter to the Archbishop of Canterbury from the Bishop of Exeter, March 20th, 1850, p. 53.

‡ Moore's Case, &c. p. 461.

Mr. Gorham's "*meaning*" as gathered from the argument of his counsel. The following extract (containing some valuable observations explanatory of the principles on which the more concise statement in the judgment was made) will be more extended than would be necessary merely to refute the charge of false quotation just mentioned. Lord Langdale writes:—

"It has been argued against Mr. Gorham, that, in the 27th Article, the word 'rightly' is used in two distinct senses; meaning in the case of adults, 'with faith and repentance;' and meaning in the case of infants, 'in proper form.'

For Mr. Gorham it was argued, that the word always signifies 'a fit state to receive;' meaning in the case of adults, 'with faith and repentance;' and meaning in the case of infants, 'with God's grace and favour.'

The condition upon which the wholesome effect is made to depend, is the worthy or right reception of the Sacrament, and, as to this condition, nothing is found in the Articles from which it appears that there is any difference in the nature of the Sacrament as administered to adults, or to infants, upon the true construction of the Articles; 'worthy' or 'right' reception, is as necessary to infants as to adults, although the capacity and condition of infants are so materially different from the capacity and condition of adults as to require very different considerations of the two cases.

Upon subjects such as these, which the Articles (the Code of Faith) leave undetermined, it is not enough to say that one view, or one opinion, is more reasonable or

more probable than another, or to say that the effect of Baptism without more is regeneration, in whatsoever sense that word is understood.

The term is undefined; the time and circumstances in which it is produced are undefined; and the opinion that it is conditional is not contrary to the Articles, and is not for that reason unsound, or to be punished as such."

The two following observations, which are the last which I shall extract from Lord Langdale's papers, show how acutely his mind had seized, as an equitable Judge, on the principal point of difference between the appellant and the respondent; and how deeply he lamented, as a Christian, the attempt to dogmatize where the Church has left the consciences of her members at liberty:—

"If all baptized infants, dying before the commission of actual sin, must be saved, which both parties teach, their difference seems to be as to the mode and time in which the effect is accomplished; and the Church may not have dogmatically determined this."

"It is a sad reflection that men, agreed upon the points which the Church by her Articles and Services plainly declares, should stir up strife and contention by their disputes upon questions which are left open and undetermined, should place themselves in continual danger of being arrogant and dogmatical for themselves, of being unkindly and indiscreetly, if not fanatically, zealous in support of their own opinions; of forgetting the charity which interprets doubtful things in the most

favourable sense; and the moderation which has been quaintly but expressively called 'the silken string running through the pearl chain of all virtues;' and of acting upon principles, which, if generally applied, and capable of being enforced by law, would prevent all freedoom of thought and expression, and all toleration within the pale of the Church of England."

CHAPTER XVIII.

THE "Historical Sketch of the Articles and Liturgy," which will now be laid before the reader, was clearly not intended by Lord Langdale as an essay or dissertation upon that subject; but was simply a collection of notes, methodically arranged, from the arguments of counsel and other sources, for his private use, in deliberating on the documentary facts connected with the Reformation of the Church of England, with special relation to the case of "Gorham *v.* the Bishop of Exeter," on which he had to adjudicate, in the month of , 1850.

HISTORICAL SKETCH OF THE ARTICLES AND LITURGIES IN ENGLAND.

[With more particular reference to the doctrine of the two Sacraments, especially that of Baptism].*

[Being a portion of the notes (from the arguments of counsel, and from other sources, in the Appeal Case, "Gorham *v.* Bishop of Exeter"), taken by the Right Hon. Lord Langdale].

I.

SUBMISSION OF THE CLERGY, 1534.

After the submission of the clergy to King Hen. VIII.

* The passages and authorities that have been added in explanation of Lord Langdale's rough notes, are distinguished by brackets, thus [ ]

(1534—25 Henry VIII. c. 19), and the enactment that he was Supreme Head of the Church of England (1534—26 Henry VIII. c. 1), it must have become desirable to establish an uniformity of doctrine as well as an uniformity of the worship of God.

II.

FIRST ARTICLES, 1536 (HENRY VIII.'S).

The first attempt to establish such uniformity, by authority of the Church of England, was made in the year 1536.

After debate in Convocation the King, with the alleged view to promote unity and concord in opinion, published certain Articles about Religion,* which were divided into two sorts; the one sort such as were stated to be expressly commanded by God, and necessary to salvation; the other sort containing such things as had been of long continuance for a decent order and honest

* Lloyd's "Formularies of Faith, put forth by authority during the reign of Henry VIII.," pp. 13–32. They may be seen, also, in Burnet's "Reformation," vol. i. pt. 1, pp. 391–395; vol. i. pt. 2, pp. 457–474, 8vo. edit. Oxf. 1816, from the Cotton MS. Cleopatra E. v. The title of these Articles, as given by Lloyd, is, "Articles devised by the Kinges Highnes Majestie to stablyshe Christen quietnes and Unitie amonge us, and to avoyde contentious opinions: which Articles be also approved by the consent and determination of the hole Clergie of this Realme. Anno M.D.XXXVI. Londini in ædibus Thomæ Bertheleti Regii Impressoris." These Articles were quoted, as of the first importance, in the arguments on the Gorham Case, before the Dean of Arches, by Dr. Bayford (Speech, pp. 89–92); also in the arguments before the Judicial Committee, by Mr. (now Vice-Chancellor Sir George) Turner (Moore's Report of the Case, &c. pp. 189, 236, 254, 446, 447), by Dr. Bayford (Moore, p. 254) and by their opposing counsel Dr. Addams (Moore, pp. 269, 302).

policy prudently instituted and used in the churches of the kingdom; and were for that purpose and end to be observed, and kept accordingly, though they were not expressly commanded of God nor necessary to salvation.

The first sort of Articles being those "concerning our faith," related to, 1st. "The Three Creeds or Symbols;" 2nd. "The Sacrament of Baptism;" 3rd. "The" (so-called) "Sacrament of Penance;" 4th. "The Sacrament of the Altar;" and, 5th. "Justification."

The second sort of Articles, or the Articles "concerning the" (so-called) "laudable ceremonies used in the Church," related to "Images," the honouring of, and "Praying to Saints," certain "Rites and Ceremonies," and "Purgatory."

The Article concerning "the Sacrament of Baptism" states, that it "was instituted and ordained . . . . . as a thing necessary for the attaining of everlasting life . . . . and is offered unto all men, as well infants as such as have the use of reason, that by baptism they shall have remission of sins, and the grace and favour of God. . . . That the promise of grace and everlasting life (which promise is adjoined unto this sacrament of baptism) pertaineth not only unto such as have the use of reason, but also to infants, innocents, and children; and that they ought, therefore, and must needs be baptized; and that, *by the Sacrament of Baptism*, they do also obtain remission of their sins, the grace and favour of God, and be made *thereby* the very sons and children of God. Insomuch as infants and children, dying in their infancy, shall undoubtedly be saved *thereby, and else not.* Item, That infants must needs be christened because they be

born in original sin, which sin must needs be remitted; which cannot be done but by the Sacrament of Baptism, *whereby they receive the Holy Ghost*, which exerciseth his grace and efficacy in them, and cleanseth and purifieth them from sin by his most secret virtue and operation. . . . . Item, That men or children, having the use of reason, and willing and desiring to be baptized, shall, *by the virtue of that Holy Sacrament*, obtain the grace and remission of all their sins, if they shall come thereunto perfectly and truly *repentant*, and contrite of all their sins before committed, and also perfectly and constantly confessing and *believing* all the Articles of our Faith, according as it was mentioned in the first Article; and finally, if they shall also have firm credence and trust in the promise of God adjoined to the said Sacrament, that is to say, that *in and by* the said Sacrament, which they shall receive, God the Father giveth unto them, for his Son Jesu Christ's sake, remission of all their sins, and the grace of the Holy Ghost, whereby they be newly regenerated and made the very children of God." *

III.

THE BISHOPS' BOOK, 1537.

The like doctrine was published and declared in the year 1537, in a book entitled, "The Institution of a Christian Man," and called "The Bishops' Book,"† which

* Lloyd's "Journal," pp. 18—20. [Burnet's "Reform," I. pt. 2, pp. 460–462. Moore's Case, &c., Append. B. p. 478.]—Ed.

† Lloyd's "Formularies," pp. 21—211. The doctrine of "The Sacrament of Baptism," is in Lloyd, pp. 92, 93, 94. ["The Institution of a Christian Man. Londini in ædibus Thomæ Bertheleti

contains "the Exposition of the Apostles' Creed," "the Declaration of the Seven Sacraments," "the Ten Commandments," "the Paternoster," "the Ave Maria," "the Article of Justification," and "the Article of Purgatory."

IV.

THE KING'S BOOK, 1543.

In the book entitled, "A Necessary Doctrine for any Christian Man," and called "The King's Book,"* which was published in 1543, it is thus expressed:—

"Because all men be born sinners . . . . . and cannot be saved without remission of their sin, which *is given* IN *Baptism by the working of the Holy Ghost;* therefore the Sacrament of Baptism is necessary for the attaining of salvation and everlasting life, ... For which causes also it is offered, and pertaineth to all men, not only such as have the use of reason, in whom the same *duly received*, taketh away and purgeth all kind of sins, both original and actual, committed and

Regii Impressoris. Anno M.D.XXXVII." The Bishops' Book was noticed in the Examination of Mr. Gorham by the Bishop of Exeter, pp. 181–186, 195; and in the Arguments before the Judicial Committee, by Dr. Bayford, see Moore's Case, &c. p. 254; by Dr. Addams, p. 269; and by Mr. Badeley, p. 418.]

* Lloyd's "Formularies," pp. 213—377. ["A necessary Doctrine and Erudition for any Christian Man; set forth by the King's Majesty of England, &c. Imprinted at London, in Flete Strete, by Thomas Berthelet, printer to the Kynges Hyghnes, the xxix daye of Maye, the yere of Our Lorde M.D.XLIII." The King's Book was quoted largely by the Bishop of Exeter, in his Examination of Mr. Gorham, pp. 186–189, 195; it was also cited in the Arguments of Mr. Turner, Moore, p. 446; of Dr. Bayford, p. 254; of Dr. Addams, p. 269; and of Mr. Badeley, p. 418.]

done before their Baptism; but also it appertaineth, and is offered unto infants, which, because they be born in original sin, have need, and ought to be christened; whereby they, *being offered in the faith of the Church*, receive forgiveness of their sin, and such grace of the Holy Ghost, that if they die in the state of their infancy, they shall thereby undoubtedly be saved." * "This Sacrament of Baptism, as all other Sacraments instituted by Christ, have all their virtue, efficacy, and strength, by the word of God, which by his Holy Spirit worketh all the graces and virtues which be given by the Sacraments to all those that WORTHILY RECEIVE the same."†

In another place of the same book it is summarily stated, that "by Baptism we be incorporated into the body of Christ's Church, obtaining in that Sacrament remission of sin, and grace wherewith we be able to lead a new life."‡

V.

THE PRIMERS, 1535, 1539, 1545.

Whilst this was the state of the doctrine, various forms of Common Prayer were in use, *viz.*,§ the Use of Sarum, of York, of Bangor, and of Lincoln.

In the time of King Henry VIII. several other forms seem to have been adopted or recommended. Three of them, set forth under the name of Primers, have been re-published‖ by Dr. Burton, *viz.*, "Marshall's Primer,"

* Lloyd's "Formul." pp. 253–254.

† *Ib.* p. 256. ‡ *Ib.* p. 293.

§ Recited in 2 & 3 Edw. VI. c. 1. Mr. Maskell, in "Ancient Liturgies," gives the forms of Sarum, York, Bangor, and Hereford.

‖ ["Three Primers, put forth in the reign of Henry VIII. *viz.*: I.

published in 1535;* Bishop Hilsey's "Primer," published in 1539;† and King Henry VIII.'s "Primer," published in 1545;‡ the last of which was intitled, "The Primer set forth by the King's Majesty, and his Clergy: to be taught, learned, and read, and none other to be used, throughout all his dominions."

VI.

THE COUNCIL OF TRENT, 1547.

Meantime, during the progress of the Reformation in England, fettered and impeded as it still was by the superstitions of the Church of Rome, but gradually advancing towards emancipation from them, and whilst the liturgy in King Henry's "Primer" contained a prayer § for deliverance "from the tyranny of the Bishop of Rome, and all his abominable enormities;" the Church of Rome itself, at the Council of Trent, proceeded to declare its own doctrine, and certain canons

'A Goodly Primer,' 1535. II. 'The Manual of Prayers, or the Prymer in English,' 1539. III. 'King Henry's Prymer,' 1545." Oxford, 8vo. 1834, pp. lxvii and 527. These Primers were cited in Mr. Turner's Argument, Moore, p. 446.]

* Burton, pp. 1—304. † *Ib.* pp. 305—436.

‡ *Ib.* pp. 437—527.

§ Burton, p. 482. ["The Litany and Suffrages" of Henry VIII.'s Primer. The same prayer, with one slight verbal variation, was continued in the two Service Books of Edward VI., 1549, and 1552: "from the tyranny of the Bishop of Rome, and all his detestable enormities . . . Good Lord deliver us." See Cardwell's "Two Books of Common Prayer," &c. in the reign of Edward VI., p. 318. Oxf. 1838. See also the two Liturgies, 1549 and 1552, edited by Ketley, for the Parker Society, pp. 102, 233. Camb. 1844.]

respecting Baptism were passed, in 1547.* Three of them were cited to us.

"CANON VI. If any one shall say that the Sacraments of the New Law do not contain the grace which they signify, or do not confer grace itself to those who interpose no obstacle, as though they were only external signs of grace or of justification received through faith, and certain marks of Christian profession by which the faithful are discerned among men from the unfaithful; let him be anathema."

"CANON VII. If any one shall say that grace is not given always, and to all, through sacraments of this kind, so far as is possible on the part of God — [*quantum est in parte Dei*]—even though they receive them rightly, but sometimes, and to some; let him be anathema."

"CANON VIII. If any one shall say that through these Sacraments of the New Law, grace is not conferred by the work wrought (*ex opere operato*), but that only [*solam*] faith of the divine promise is sufficient for obtaining grace; let him be anathema."

* Fra Paolo, Opere, i. 254; Bayford, 59, 60; Appendix, 220. [The Argument of Dr. Bayford in behalf of the Rev. G. C. Gorham, in the Arches Court of Canterbury, March, 1849, pp. 59, 60, 220, 8vo. London, 1849.]

† [They were cited in the argument of Mr. (now Vice-Chancellor) Turner, before the Judicial Committee of Privy Council, 11th Dec. 1849. See Moore's Case of Rev. G. C. Gorham, against the Bishop of Exeter, pp. 202, 203.]

VII.

CRANMER'S CATECHISM.

In the book called "Cranmer's Catechism,"* published in 1548, it is said, that "by Baptism we be born again to a new and heavenly life, to be received into God's Church and Congregation, which is the foundation and pillar of the truth;" † and, after dwelling upon the confession of sin, the prayer for forgiveness, and the promises to fight against sin, which are made in Baptism, addressing those who had been baptized, he prays them to continue in the same good mind, to acknowledge in their hearts before God that they were sinners, be sorry for the same, and pray to God to heal and deliver them from their sin. He then proceeds as follows:—"Beware you fall not into sin again, have no delight in sin, nor sin not willingly; but be godly and holy, and suffer gladly such afflictions as God shall lay upon your backs. And, IF *you do thus, then your baptism shall be available, and God shall work in you by his Holy Spirit, and shall finish in you all those things which by Baptism He hath begun.* God is almighty and able to work in us, by Baptism, forgiveness of our sins and all those wonderful effects and operations for the which He hath ordained the same, although men's reason is unable to conceive the same." ‡

* [So "called;" but, in fact, the Catechism of Justus Jonas, translated into English, and set forth by Cranmer in 1548. See Dr. Bayford's Argument in Moore's Case; Dr. Addams's Argument in Moore's Case, &c. p. 293; and Mr. Badeley's, pp. 419, 425.]

† Cranmer's "Catechism," Burton's edition, p. 183.

‡ *Ib.* pp. 185, 186.

VIII.

FIRST LITURGY—1ST BOOK OF EDWARD VI.

In November, 1548, an Act of Parliament (2 & 3 Edw. VI., c. 1), was passed, in which, after reciting that "of long time there had been in England and in Wales divers forms of Common Prayer, commonly called the Service of the Church, that is to say, the Use of Sarum, of York, of Bangor, and of Lincoln; and, besides the same, then of late much more divers and sundry forms and fashions had been used in the cathedral and parish churches of England and Wales, as well concerning the mattens and morning prayer, and the evensong, as also concerning the Holy Communion, commonly called the Mass, with divers and sundry rites and ceremonies concerning the same, and in the administration of other Sacraments of the Church:" and further reciting that "to the intent a uniform, quiet, and godly order should be had concerning the premises;" the King had "appointed the Archbishop of Canterbury, &c., . . . to consider and ponder the premises," and "draw and make one convenient and meet Order, Rite, and Fashion of common and open Prayer and Administration of the Sacraments to be had and used in England and Wales; the which," as it is said, "by the aid of the Holy Ghost, was concluded, set forth, and delivered" to the King "in a Book entitled, 'The Book of Common Prayer, &c.'" It was among other things enacted, "That all ministers in any Cathedral or other place, should, after the feast of Pentecost next ensuing, be bound to say and use the Mattens, Evensong, Celebration of the Lord's Sup-

per, commonly called the Mass, and administration of each of the Sacraments, and all their common and open prayer, in such manner and form as is mentioned in the book, and none other or otherwise;" and various penalties were appointed for ministers refusing to use the Book of Common Prayer, or wilfully using any other form of open prayer, or preaching in derogation or depraving of the Book.*

IX.

SECOND LITURGY OF EDWARD VI., OR FIRST REVISION, 1552.

The book thus sanctioned was afterwards revised and perfected, and in the early part of 1552, an Act† (5 & 6 Edw. VI. c. 1) was passed, in which, after reference made to the Book, or Common Service, established by the former Act, it was enacted as follows: "Because there has arisen, in the use and exercise of the foresaid Common Service in the church, divers doubts for the fashion and manner of the ministration of the same, rather by the curiosity of the minister than of any other worthy cause, therefore, as well for the more plain and manifest explanation hereof, as for the more perfection of the said order of Common Service in some places where it is necessary to make the same prayers and fashion of service *more earnest and fit to stir Christian people to the true honouring of Almighty God*," the King,

* Stat. of the Realm, iv. 37. [This Act was cited largely in Mr. Turner's Argument. See Moore's Case, &c. pp. 191, 192, 193.]

† *Ib.* p. 130. [See Mr. Turner's Argument in Moore's Case, &c. pp. 193, 194.]

" with the assent of the Lords and Commons, &c. had caused the order of Common Service, entitled, The Book of Common Prayer, to be faithfully and godly perused, explained, and made fully perfect," with an addition [of the Ordinal,] " to be of like force, authority, and value as the same like book of Common Prayer was before and to be accepted and esteemed in like sort and manner;" and the provisions of the former Act were to be applied for the establishing of the new book.

X.

SECOND ARTICLES, 1552 (EDWARD VI.'S).

At this time no articles of religion had been sanctioned by the Legislature; but, in the year 1552, after the second of King Edward's Books of Common Prayer had been established by Act of Parliament, certain " Articles "* (forty-two in number) were " agreed on by the Bishops, and other learned men, in the Synod at London, for the avoiding of controversy in opinions,

* Cardwell's "Synodalia," vol. i. pp. 1–17, and pp. 18–33. ["Articuli, de quibus in Synodo Londinensi, Anno Dom. M.D.LII. ad tollendam opinionum dissensionem, et consensum veræ Religionis firmandum, inter Episcopos et alios eruditos viros convenerat: Regia authoritate in lucem editi. Excusum Londini apud Reginaldum Wolfium, Regiæ Majestatis in Latinis Typographum. Anno Domini M.D.LIII." Cardwell, Synod. i. pp. 1–17. "Articles agreed on by the Bishoppes, and other learned menne in the Synode at London, in the yere of our Lord Godde, M.D.LII. for the avoiding of controversie in opinions, and the establishmente of a godlie concorde, in certeine matiers of Religion. ¶ Published by the Kinge's Majesties commaundemente, in the Moneth of Maie. Anno Domini 1553. Richardus Graftonus typographus Regius excudebat. Londini, mense Junii. An. do. M.D.LIII." Cardwell's Synod. i. pp. 18—33.]

and the establishment of a godly concord, in certain matters of religion."

The 26th of these articles relates to both the Sacraments, and is as follows:*—" XXVI. Our Lord Jesus Christ hath knit together a company of new people with Sacraments, most few in number, most easy to be kept, most excellent in signification, as is Baptism, and the Lord's Supper. The Sacraments were not ordained of Christ to be gazed upon, or to be carried about, but that we should *rightly* use them. And in such only, *as* WORTHILY *receive* the same, they have an wholesome effect and operation, and yet not that of the work wrought, as some speak [*non ex opere* (*ut quidam loquuntur*) *operato*] which word, as it is strange and unknown to Holy Scripture: So it engendreth no godly, but a very superstitious sense. But they that receive the Sacraments unworthily, purchase to themselves damnation, as Saint Paul saith.—Sacraments ordained by the word of God be not only badges and tokens of Christian men's profession, but rather they be certain sure witnesses and effectual signs of grace and God's good will toward us, by the which He doth work invisibly in us, and doth not only quicken, but also strengthen and confirm our faith in Him."

The 28th Article is as follows:†—" XXVIII. Baptism is not only a sign of profession, and mark of difference, whereby Christian men are discerned from other

* Cardwell's Synod. vol. i. pp. 12, 27. [See Mr. Turner's Argument, Moore's Case, &c. p. 203.]

† *Ib.* pp. 13, 28. [See Mr. Turner's Argument, Moore's Case, &c. p. 204.]

that be not christened, but it is also a sign and seal of our new birth, whereby, as by an instrument, they that receive Baptism *rightly*, are grafted in the Church, the promises of forgiveness of sin, and our adoption to be the sons of God, are visibly signed and sealed, faith is confirmed, and grace increased by virtue of prayer unto God. The custom of the Church to christen young children is to be commended, and in anywise to be retained in the Church."

XI.

ABOLITION OF KING EDWARD'S LITURGIES (MARY'S).

These Articles were published in the month of June, 1553, very shortly before the death of King Edward VI. (July 6th) and the accession of Queen Mary, in whose reign [the statute 2 & 3 Edw. VI. c. 1, and also] the statute of 5 & 6 Edw. VI. c. 1. was repealed [by 1 Mary, c. 2.*]

XII.

THIRD LITURGY, OR SECOND REVISION, 1559 (ELIZABETH).

But in 1559, by the statute of 1 Eliz. c. 2, the repealing Act of Mary (which was recited as having tended "to the great decay of the due honour of God, and discomfort to the professors of the truth of Christ's religion") was repealed, and it was enacted that the Second Book of King Edward, "with the Order of Service, and of the Administration of Sacraments, Rites, and Ceremonies, with the alterations and additions therein then added," should be "of full force and effect," notwithstanding the statute of repeal, and various penalties

* [See Mr. Turner's Argument, Moore, p. 195.]

were provided to enforce the observance of the same book.*

XIII.

THIRD ARTICLES, FRAMED 1562, ESTABLISHED 1571 (ELIZABETH'S).

About the same time proceedings were taken in Convocation for the reconsideration of the Articles of King Edward VI.; and in the year 1562, the Articles† were settled, with very slight difference in the form, and nearly to the effect, afterwards enacted in the year 1571, when they were printed by the Queen's authority under the title‡ of "Articles whereupon it was agreed by the

* [See Mr. Turner's Argument, Moore, pp. 195, 196.]

† Cardwell's "Synodalia," i. pp. 34–52, and pp. 53–72. ["Articuli de quibus in synodo Londiniensi anno Domini juxta Ecclesiæ Anglicanæ computationem M.D.LXII., ad tollendam opinionum dissentionem, et firmandum in vera Religione consensum, inter Archiepiscopos Episcoposque utriusque Provinciæ, necnon etiam universum Clerum convenit. Regia authoritate in lucem editi. Londini, anno Domini M.D.LXIII. Excusum Londini apud Reginaldum Wolfium, Regiæ Majest. in Latinis typographum. Anno Domini 1563." Cardwell's "Synod." i. pp. 34—52. "¶ Articles, wherevpon it was agreed by the Archbishoppes, and Bishops of both the prouinces, and the whole Cleargie, in the Conuocation holden at London, in the yere of our Lorde God, M.D.LXII. according to the computation of the Churche of Englande, for the auoydyng of the diversities of opinions, and for the stablishyng of consent, touchyng true religion. Put foorth by the Queene's aucthoritie, Imprinted at London in Powles Church Yarde, by Richarde Jugge, and John Cawood, printers to the Queenes Majestie." Cardwell's "Synod." i. pp. 53—72.]

‡ ["Articuli de quibus convenit inter Archiepiscopos et Episcopos utriusque provinciæ, et Clerum universum in Synodo Londini, an. Dom. 1562, secundum computationem Ecclesiæ Anglicanæ, ad tollendam opinionum dissensionem, et consensum in vera religione firmandum. Editi authoritate serenissimæ Reginæ. Londini, apud

Archbishops and Bishops of both Prouinces, and the whole Cleargie, in the Conuocation holden at London in the Yere of Our Lorde God 1562, according to the computation of the Churche of Englande, for the auoyding of the diuersities of opinions, and for the stablishyng of consent touching true religion." And by the statute (1571—13 Eliz. c. 12), it was enacted, that every ecclesiastical person should before Christmas day next following "declare his assent and subscribe" to all those Articles, upon pain of being "deprived;" and all his "ecclesiastical promotions" were to be "void, as if he then were naturally dead." And, further, "that if any person ecclesiastical should *advisedly maintain* or affirm any doctrine *directly contrary or repugnant to any of the said Articles*, and should persist therein, or after revocation eftsoon affirm such untrue doctrine, such maintaining or affirming and persisting should be just cause to deprive such person of his ecclesiastical promotions."

There was now a doctrine of the Church of England by law established: it was then, as it is now, to be found in the Articles * which were framed [in 1562] and in the year 1571 established, for the express purpose of avoiding diversities of opinions and establishing

Iohannem Dayum Typographum. An. Domini. 1571." Cardwell's "Synod." i. pp. 78—89. "Articles whereupon," &c. (as given by Lord Langdale in the text). "Put foorth by the Queenes authoritie. Imprinted at London, in Powles Churchyard, by Richarde Iugge and Iohn Cawood, Printers to the Queenes Maiestie, in Anno Domini 1571." Cardwell's "Synod." i. pp. 90—107.]

* [See Mr. Turner's Argument on this Statute, Moore's Case, &c. pp. 199, 201, 449.]

of consent touching true religion; or in the Articles as qualified, if need were, by expressions and directions, or statements contained in the Liturgy which in the time of Edward VI., and in 1559, under Queen Elizabeth, was established for the purpose of securing one uniform order of common service or prayer, and of the administration of the Sacraments, rites, and ceremonies of the Church of England.

XIV.

FOURTH LITURGY, OR THIRD REVISION, 1604 (JAMES I.'S).

Soon after the accession of King James, and the Conference called the Hampton Court Conference, the King caused certain alterations to be made in the Book of Common Prayer, and took upon himself by Proclamation * to "require and enjoin all men, as well ecclesiastical as temporal, to conform themselves unto it," as altered, "and to the practice thereof as the only public form of serving God established and allowed to be in this realm." Amongst other alterations made, the Rubrics in the office for Private Baptism were altered, "so as," apparently, "to restrict the administration of that Sacrament to the minister of the parish, or some other lawful minister;†" and the explanation of the two Sacraments was added to the Catechism.‡

* Cardwell's "Doc. Annals," ii. p. 76; "Conferences," 225. It was dated March 5, 1603-4.

† [Such is the opinion of] Cardwell, "Conferences," p. 144.

‡ [Some other comparatively trifling changes were made; see Cardwell's "Conferences," pp. 143, 144. Lord Langdale notices only those matters which had more or less reference to the subject of Mr. Gorham's Appeal.]

XV.

THE CANONS, 1604.

Soon afterwards were published * the "Constitution and Canons ecclesiastical, treated upon by the Bishop of London, President of the Convocation for the Province of Canterbury, and the rest of the Bishops and Clergy of the said Province; and agreed upon with King's Majesty's license, in their Synod begun at London, Anno Domini 1603, &c., and published for the due observation of them, by his Majesty's authority, under the Great Seal of England."

These Canons are one hundred and forty-one in number.—The 36th relates to the "Subscription required of such as are to be made Ministers." The 39th, to the "Cautions for Institution of Ministers into Benefices." These Canons were never confirmed in Parliament; but, so far as they are not repugnant to the general law, they have been deemed to be binding on the Clergy.

XVI.

DECLARATION PREFIXED TO THE ARTICLES (1628?) (CHARLES I.'S.)

Nothing to affect the Articles was done in the time of King James; his successor caused the Declaration †

* Cardwell's "Synodalia," pp. 164—244 [for the Latin Canons; pp. 245—415, for the English Canons.]

† Rushworth, i. Append. 4 E. [Rushworth does not give the date of this "Declaration," but only King Charles I.'s allusion to it in his speech, March 10th, 1628. The earliest printed copy of the Articles to which this Declaration is prefixed, is the edition of 1628, by Norton and Bill; and there can be no rational doubt that it was put

by which they are now accompanied to be prefixed to them.

XVII.

CANONS OF 1640.

It seems unnecessary to take any notice of the Constitutions and Canons agreed upon in the Convocation of 1640.*

During the civil war, and the distractions which accompanied it, all authority to compel uniformity in doctrine or services was suspended.

XVIII.

FIFTH, OR PRESENT, LITURGY, 1662. FOURTH, OR LAST, REVISION (CHARLES II.'S.).

After the Restoration, on the 25th of March, 1661, the King appointed a Commission of Divines, selected from the two parties whose opposing opinions created the greatest difficulty, to revise the Book of Common Prayer. Dr. Cardwell † has collected from the instructions given to the Commissioners, that the existing Book of Common Prayer was to be the basis of the future Liturgy; that it was fully to be considered and

forth early in that year, or late in 1627. See a curious extract from Prynne's "Canterburie's Doom" (p. 160), and other information on this subject, in a note to Answer 62 of Mr. Gorham's Examination, p. 115, reprinted in Moore's Case, &c. p. 51.]

* Cardwell's "Synodalia," i. p. 380.

† Cardwell's "Conferences," pp. 258, 259. [These instructions are gathered by Dr. Cardwell, from the King's warrant for the Conference at the Savoy, dated 25th March, 13 Charles II., 1661; printed in Cardwell's "Conferences," pp. 298—302. See, also, Mr. Turner's Argument, Moore's Case, &c. pp. 196 seqq.]

examined by both parties; that any objections or exceptions raised against it were to be entertained and discussed; that it was to be compared with the primitive Liturgies, the acknowledged models of public worship; that if any changes were made, they should be such only as were reasonable and necessary for the satisfying of tender consciences, and the establishment of peace and unity; and that no changes should be made in matters familiar to the people, and generally approved in the Church.

In the Conference which took place, a leading objection was, "that throughout the several Offices, the phrase is such as presumes all persons (within the communion of the Church) to be regenerated, converted, and in an actual state of grace, which (had ecclesiastical discipline been truly and vigorously executed in the exclusion of scandalous and obstinate sinners) might be better supposed; but there having been, and still being, a confessed want of that (as in the Liturgy is acknowledged), it cannot be rationally admitted in the utmost latitude of charity."* And this objection is afterwards particularly applied to expressions which occur in the Service of Public Baptism;† in the Catechism;‡ in the Services for Confirmation;§ for the Visitation, &c., of the Sick,‖ and the Burial of the Dead.¶

Among the eight points which the Nonconformist divines alleged to be contrary to the word of God, were these:—4. "That ministers be forced to pronounce all

* Cardwell's "Conferences," p. 308, Prop. XV.

† *Ib.* p. 323 et seq. ‡ *Ib.* p. 325. § *Ib.* pp. 327–8.

‖ *Ib.*. pp. 331—333. ¶ *Ib.* 265, 266, *note.*

baptized infants to be regenerate by the Holy Ghost, whether they be the children of Christians or not;" and, 7. "That they are forced to give thanks for all whom they bury, as brethren, whom God in mercy has delivered and taken to himself."

The general answer of the Bishops is thus:*—"The Church, in her prayers, useth no more offensive phrase than St. Paul uses, when he writes to the Corinthians, Galatians, and others, calling them in general the Churches of God, sanctified in Christ Jesus, by vocation saints; amongst whom, notwithstanding there were many who, by their known sins (which the Apostle endeavoured to amend in them), were not properly such; yet he gives the denomination to the whole from the greater part, to whom in charity it was due, and puts the rest in mind what they have by their Baptism undertaken to be, and what they profess themselves to be; and our prayers and the phrase of them surely supposes no more than that they are saints by calling, sanctified in Christ Jesus, by their Baptism admitted into Christ's congregation, and so to be reckoned members of that society till either they shall separate themselves by wilful schism, or be separated by legal excommunication which THEY (do the Bishops mean the Nonconformist ministers?), seem earnestly to desire, and so do *we*."

As to the prayers and phrases of them in the service for Public Baptism, after saying that they thought it "very hard and uncharitable punishing poor infants for

* Cardwell's "Conferences," pp. 342, 343. [This was urged in Mr. Gorham's Examination, p. 157 (Moore's Case, &c. p. 80); and by Mr. Turner in his Argument, Moore, p. 451.]

their parents' sake, &c.*" they proceed,—"Our Church concludes more charitably, that Christ will favourably accept every infant to Baptism that is presented by the Church according to our present order." That "it is an erroneous doctrine, and the ground of many others, that children have no other right to baptism than in their parents' right." That it had "been accounted reasonable, and allowed by the best laws, that guardians should covenant and contract for their minors for their benefit. By the same right the Church hath appointed sureties to undertake for children, when they enter into Covenant with God by Baptism." "Baptism is our spiritual regeneration," so the creed says, "our Baptism for the remission of sins; and we may in faith say of every child that is baptized, that it is regenerated by God's Holy Spirit, and the denial of it tends to Anabaptism, and the contempt of this Holy Sacrament, as nothing worthy, nor material whether it be administered to children or no." †

Of the Catechism they say, that "the effect of children's Baptism depends neither upon their own present actual faith and repentance (which the Catechism expressly says they cannot perform), nor upon the faith and repentance of their natural parents or pro-parents, or of their god-fathers or god-mothers; but upon the ordinance and institution of Christ. But it is requisite that when they come to age they should perform these conditions of faith and repentance, for which also their god-fathers and god-mothers charitably undertook on their behalf. And what they do for the infant in this

* Cardwell's "Conferences," p. 355. † *Ib.* p. 356.

case, the infant himself is truly said to do, as in the Courts of this kingdom daily the infant does answer by his guardian." *

On the prayer before the imposition of hands in the service for Confirmation, they say, "It supposeth, and truly, that all children were at their Baptism regenerate by water and the Holy Ghost, and had given unto them the forgiveness of all their sins; and it is charitably presumed that, notwithstanding the frailties and slips of their childhood, they have not totally lost what was in Baptism conferred upon them." †

Upon the Rubric before Absolution in the service of the Visitation of the Sick, they say, "If the sick person show himself truly penitent, it ought not to be left to the minister's pleasure to deny him Absolution, if he desire it; and the condition needs not to be expressed, being always necessarily understood."‡

On the prayer following the 2nd rubric in the service of the Burial of the Dead, they say, "We see not why these words may not be said of any person whom we dare not say is damned, and it were a breach of charity to say so even of those whose repentance we do not see; for whether they do not inwardly and heartily repent, even at the last act, who knows? and that God will not even then pardon them upon such repentance, who dares say? It is better to be charitable, and hope the best, than rashly to condemn."

After this conference was ended, some alterations were made in the Prayer Book, and some additional

* Cardwell's "Conferences," p. 357.

† *Ib.* pp. 358, 359. ‡ *Ib.* p. 361.

prayers were added by the Convocation; and the revised Liturgy was presented to the King in one Book, in December, 1661. By the Act for the Uniformity of Public Prayer, &c., (1662, 13, 14, Can. II, c. 4), it was enacted, that "all ministers should be bound to use and say the prayers and services in such order and form as is mentioned in the same book, and every minister enjoying any ecclesiastical benefice or promotion was, before the feast of St. Bartholomew, 1662, openly, publicly and solemnly to read the Morning and Evening Prayer appointed by the Book, and was to declare his unfeigned assent and consent to the use of all things in the Book contained," in the words thereby appointed. And it was enacted, that "no form or Order of Common Prayer should be openly used in any church, chapel, or other public place of or in any College or Hall, in either of the Universities, the Colleges of Westminster, Winchester, or Eton, or any of them, other than what is prescribed and appointed to be used in and by the Book, and the Governor or head of any College or Hall within a month after his election, or collation and admission, was openly and publicly to subscribe unto the Thirty-nine Articles, mentioned in the Statute of the 13th Elizabeth." The like provision was made for the case of lecturers.*

* [Cardwell's "Conferences," pp. 369—392. Also Mr. Turner's Argument before the Judicial Committee in Moore's Case, &c. pp. 196—199.]

CHAPTER XIX.

THE SEQUEL TO THE GORHAM CASE.

THE history of this important judgment would not be complete without a brief notice of the strenuous, but ineffectual, legal struggle which immediately followed it, for the purpose of setting it aside altogether.

Although the Bishop of Exeter had joined issue with Mr. Gorham in his Appeal to the Queen in Council, and had expressed no doubt of the jurisdiction of the Judicial Committee of the Privy Council during the seven months which had elapsed from the notice of appeal, on the 2nd of August, 1849, to the judgment which was adverse to him on the 8th of March, 1850; yet he did not scruple (more than a month after that unfavourable decision) to raise a technical objection to the whole of these proceedings to which he had been a consenting party.

1. On the 15th of April, 1850, an application was made by the Bishop to the Court of Queen's Bench for a rule *Nisi*, "to show cause why a Writ of Prohibition should not issue to the Dean of the Arches, and to the Archbishop of Canterbury, to prohibit them from requiring the Bishop of Exeter, or from proceeding themselves, to institute Mr. Gorham to the vicarage of

Brampford Speke, or otherwise carrying into execution an order of her Majesty in Council, made on the 9th of March, 1850, upon a report of the Judicial Committee of the Privy Council in an Appeal from the judgment of the Court of Arches in a suit of *Duplex Querela* between the said George Cornelius Gorham and the said Henry Bishop of Exeter." The objection was, that by the just construction of the ancient statutes, 24 Henry VIII., c. 12, and 25 Henry VIII., c. 19, the only Appeal given from the Archbishop's Court in all causes which touch the Queen is to the Upper House of Convocation. The Rule was applied for by Sir Fitzroy Kelly, in a statement distinguished by its ability, but was discharged by the Court on the 25th of April, at the sittings before Lord Chief Justice Campbell and Justices Patteson, Wightman, and Erle, who were unanimous in their judgment. The Court gave no opinion on the point whether this *Duplex Querela* was a cause which touched the Queen; her Majesty's right as patron of the vicarage of Brampford Speke not having been disputed. It held that, in practice, from the Reformation to recent times, in suits decided in the Archbishop's Courts in which the Crown has been concerned, Appeals have been allowed to the Court of Delegates, which Court has been replaced by the Judicial Committee of the Privy Council by the acts 2 & 3 William IV., c. 92, and 3 & 4 William IV. c. 41, s. 3. It cited one remarkable case, all but coeval with the statutes in question (3 *Dyer*, 273, a). Goodman, Dean of Wells, having been deprived, appealed to the Archbishop, and from the Primate to the King (Edward VI.) in Chancery, who, by his delegates, con-

firmed the sentence; and the King conferred the Deanery on Turner. This case undoubtedly "touched the King" as much as Mr. Gorham's case could be held to do, for the King was patron of the deanery. On the accession of Mary a fresh commission of delegates reviewed the sentence, and restored Goodman. When Elizabeth came to the throne, Turner procured a fresh review by a commission of delegates, who removed Goodman and restored Turner. Goodman applied for one more commission of delegates, who confirmed his deprivation, and Turner enjoyed the deanery to his death. Not a doubt was then raised respecting the appeal having been duly brought before the King's delegates in Chancery, under sec. 4 of the statute 25 Henry VIII., c. 19; nor was a thought entertained of referring the Appeal to the Convocation, according to the construction of those ancient statutes now pleaded for by the Bishop of Exeter. The Chief Justice concluded his judgment by the observation:—

"Were the language of the 25th Henry VIII., c. 19, obscure instead of being clear, we should not be justified in differing from the construction put upon it by cotemporaneous and long-continued usage. There would be no safety for property or liberty if it could be successfully contended that all lawyers and statesmen have been mistaken for centuries as to the true meaning of the Act of Parliament. We have been called upon to recollect that the Upper House of Convocation would be a much fitter tribunal than the Judicial Committee to decide such questions as arose in the Appeal between Mr. Gorham and the Bishop of Exeter. But, if this be

so (and if questions about wills, about marriages, and about tithes, which must follow the same rule, might likewise be better decided by divines than by judges regularly trained in the profession of the law, and accustomed to administer justice in other courts), we cannot be influenced by any view to public policy. Sitting here, we can only interpret the law, and try to discover the intention of the Legislature from the language of the statute-book. Proceeding upon this principle, we all think that no reason has been alleged to invalidate the sentence in this case, on the ground that the Queen in Council, and the Judicial Committee, had no jurisdiction over the Appeal; and therefore we feel bound to say that a rule to show cause why a prohibition should not be granted to stay the execution of the sentence ought not to be granted."—Rule refused.

2. While the public were in daily and anxious expectation of the termination of this long protracted cause, by the institution of Mr. Gorham by the Dean of the Arches, they were surprised, on the 2nd of May, to hear of an application to another of the Courts at Westminster—the Court of Common Pleas—to the same effect as that which had been unsuccessfully made to the Queen's Bench, namely, to prohibit the Ecclesiastical Court of the province of Canterbury from carrying out the sentence of the Judicial Committee adopted by the Queen in Council. The rule *Nisi* was refused on the 27th of May, at the sittings before Lord Chief Justice Wilde and Justices Maule, Cresswell, and Talfourd. The judgment was very long and elaborate. The following extracts will indicate its result, with sufficient

minuteness as regards the purpose for which it is here noticed:—

"It appears to this Court that the true construction of the statute 25 Henry VIII., c. 19, which applies to the Appeal that has been made in this case, is, that Appeals in all cases made under that statute may be made to the Queen in Council, whether the cause in which such Appeal may arise shall or not touch the Crown; and that, therefore, under the authority of the subsequent statutes, the Appeal was properly referred to the Judicial Committee of the Privy Council. . . . . After due inquiry and investigation, no instance has been discovered of an Appeal in such cases to the Convocation; and the report made to us, that no such instance can be found, derives a great confirmation from the circumstance that, notwithstanding the great interest this case has excited, and the great ability and industry that have been exercised in the course of its prosecution, the applicant has not suggested that any instance has occurred of such Appeal to the Convocation. . . . . In determining upon the present application, we have attentively considered the circumstances under which it comes before us. The litigant parties have concurred in prosecuting the Appeal to the Judicial Committee; and, *after a decision has been come to, an objection is, for the first time, made upon the ground of a want of jurisdiction in the tribunal.* The case was elaborately moved before the Court of Queen's Bench; that Court has pronounced a deliberate judgment upon the construction of the statutes. The applicant has exercised his undoubted right of making a similar applica-

tion to this Court; and, when so doing, the learned counsel who made this motion, brought before us all the authorities that there is any reason to suppose have any bearing upon the subject; and (the Court of Queen's Bench having stated that there were several instances of Appeals to the delegates, founded upon the construction adopted by that Court) nothing was presented to us during the arguments in support of the application, tending to create any doubt of the accuracy of that statement; although we cannot but suppose that due investigation was made as to the fact of such instances having occurred, and of their applicability to the case. We have informed ourselves of the particulars of those cases, and no Appeal has been discovered to have been made to the Convocation. Under these circumstances we have every reason to conclude that further discussion will not furnish additional information or light upon the subject; . . . . . and we think that it would not be consistent with the due discharge of our duty, *but would only tend to prolong an useless litigation* to grant any rule. . . . . The judgment of the Court, therefore, is, that there be no rule in this case."—Rule refused.

3. One of the most remarkable instances of perseverance in a cause desperately hopeless, is afforded by the renewal of this attempt by the Bishop of Exeter to persuade the Courts of Westminster to grant him a Rule to show cause against his application for a Prohibition. "*Thrice*" these Courts "*slew the slain*," before his Lordship could be convinced that the judgment which Lord Langdale had pronounced in the name of the Judicial Committee of Privy Council—in which the

two Archbishops had concurred—and which the Queen had confirmed—proceeded from a jurisdiction which it was impossible to shake by subtle and ingenious constructions of ancient Acts of Parliament, however eloquently argued, in the face of the undeviating practice of three centuries.

Notwithstanding the very decisive judgments of the Courts of Queen's Bench and of the Common Pleas; in which eight Judges were unanimous in their refusal of a Rule — the Bishop made one more application — namely, to the Barons of the Exchequer, on the 7th of June. A Rule to show cause why a Prohibition should not issue, was, indeed, granted by this Court on the 11th of June; but it was induced to "take this step," as the Lord Chief Baron Pollock said, only under the circumstance of "the peculiar season of the year," the Term being at its close, and this measure being, consequently, necessary, to give time for the pronunciation of "a deliberately considered judgment" at the sittings after Term, and before the long vacation—the postponement of a decision to Michaelmas Term being considered as "a delay prejudicial to all parties."

Cause was shown against the Rule by Sir John Jervis, the Attorney-General, Mr. Greenwood, and Mr. Cowling, on the 29th of June. The Rule was supported on the 1st and 2nd of July, by Sir Fitzroy Kelly, Mr. Martin, Mr. Peacock, and Mr. Baddeley.

On the 8th of July, Chief Baron Pollock pronounced a judgment by which the rule *Nisi* was discharged; Baron Rolfe, Baron Platt, and Baron Alderson being present, and unanimously concurring. A very short

extract may serve to show that the Court of Exchequer took the same general view as the Courts of the Queen's Bench and of the Common Pleas.

"We entertain considerable doubt whether the matter 'touches the Crown,' or not: but we have thought it unnecessary to decide this point, as we are clearly of opinion that there was an Appeal given by the 25th Hen. VIII. c. 19 to the King in Chancery, and therefore now there is an Appeal to the Queen in Council . . . . . for the Judicial Committee, without any doubt, have been substituted for the Court of Delegates, and have (at the least) the same jurisdiction . . . . . Entertaining, as we do, no doubt upon the question before us, *and concurring with the other Courts of Westminster Hall, and, as far as we know, with every Judge of all the Courts*, we do not think that we should be justified in creating the delay and expense of further proceedings with a view to take the opinion of the House of Lords; and our judgment is, that the rule be discharged, *with costs*." Rule discharged.

4. Some intimations had been given that the application for Prohibition would still be prosecuted by the Bishop in another, and the only Court remaining open for such a step—that of the Petty Bag in Chancery. If such an idea were ever seriously entertained, it was probably abandoned from the consideration of the very decisive character of the judgment by the Barons of the Exchequer, and the intelligible hint of the vexatious character of these proceedings by adjudication of costs to Mr. Gorham. Moreover, it was a reflection which could not but have discouraged the most pertinacious litigant,

that *twelve* Judges had unanimously decided unfavourably to the applicant; and that one of the most eminent of them had declared that probably all the Judges of all the Courts held the opinion which *twelve* had expressed. This long agitated matter (it had been disputed for three years between the parties, and had occupied two years in five courts of law) was, at length, brought to a termination. The important declaration of the Judicial Committee of the Privy Council (of which I have thought it right to give so extended an account in this chapter, as constituting a remarkable event in the legal life of Lord Langdale) now took effect; the cause, so decided, having been adopted by the Queen in Council, and, consequently, "remitted with that declaration to the Arches Court of Canterbury, to the end that right and justice might be done in the matter." Mr. Gorham was instituted to the vicarage and parish church of Brampford Speke, in the hall of that Court, by Sir Herbert Jenner Fust, the Official Principal of the Archbishop of Canterbury, on the 6th of August, 1851.

CHAPTER XX.

LORD LANGDALE'S DISPOSAL OF HIS PATRONAGE.—MR. SANDERS.—MR. LE DIEU.—THE DEPUTY KEEPERSHIP OF THE RECORDS.—THE TAXING MASTERS.—THE SIX CLERKS.—HIS INTERCOURSE WITH THE AUTHOR. —HIS PRIVATE LIFE. — LOVE OF CHILDREN. — KINDNESS TO HIS DEPENDANTS.—KEEN SENSE OF HONOUR.

SPEAKING of that coveted appendant to office—patronage, Lord Langdale once said, "If you have to give away a place, and only to seek out a person to whom it will be agreeable to receive the profit of it, there seems nothing pleasanter than patronage; but if, in the exercise of patronage, you conscientiously endeavour to find out a person who is really deserving, and the most deserving and the best able to fulfil the duties of his intended situation, there is nothing more painful or difficult to accomplish. You will have to inquire into means, capacities, and qualifications, which cannot easily be ascertained, but which it is of the utmost importance to ascertain, in order to get the proper person, and to create a general persuasion that merit will be duly considered. The difficulties are greater than a man without a good deal of experience is apt to imagine."

The foregoing sentiments were not mere words of course; he acted up to their spirit in every appointment he had to make.

He did not even seek his Chief Secretary from amongst his friends and relatives, but selected for that office a gentleman with whom, except as a member of the same bar, he was unacquainted, conscientiously believing from all he had heard, that he could find no one better qualified for the appointment.

The gentleman in question was Mr. George W. Sanders, a Chancery barrister and conveyancer, who, at the time, was passing his Christmas vacation in the country, and who had neither solicited nor thought of the appointment.

Lord Langdale made no change among the other officers and attendants at the Rolls, and he would never for a moment listen to the suggestions for the exercise of his patronage by removal of any officer against whom no fault was charged, whether originally appointed by himself or not.*

* Mr. Le Dieu informs me that as soon as his master was appointed to the Rolls, he applied to him for the office of Under-Secretary. "That I cannot give you," was the reply. "Mr. Murray has held that office many years, and done his duty well. I will not remove him, or any one who has not committed a fault." I cannot resist following Mr. Le Dieu's fortunes a little further, because the facts connected with the appointment which his master gave him, bring out another strong feature in Lord Langdale's character, and prove the correctness of the opinion of the writer of that truthful and elegant memoir of his Lordship, which appeared on the death, in the "Times" newspaper. His whole life was unsullied by the suspicion of a job, or of being influenced by any but the loftiest motives of action. Mr. Le Dieu continues: "I said, 'Will you think it right to give me the office of the First Gentleman of the Chamber?' 'That is what I thought of,' he answered; 'but, about the salary—for I mean it to be a salary, and not an uncertainty depending on fees—what are your notions upon that point?' I replied that 'Sir C. C.

On his subsequently receiving the Great Seal as First Commissioner, the appointment to every office attendant upon the Great Seal fell into his hands; but he made not the slightest change, though there were not wanting persons who pressed him to do so.

The way in which his Lordship requested Mr. Sanders to give assistance in his laborious office, by becoming his Chief Secretary, was as flattering and honourable to Mr. Sanders as it was kind and considerate in Lord Langdale.

The new Secretary soon acquired the friendship and unbounded confidence of his patron, and he retained them to the end. On accepting office he gave up his practice at the bar, in order to devote himself exclusively to his new duties, and his assiduity and attention were rewarded by the esteem and high opinion which Lord Langdale entertained of his merits.

In writing the history of a life, not only truth but artistic skill demands that the shadows as well as the lights should be pourtrayed. In the case of Lord Lang-

Pepys had promised his clerk something better than he had while in his private service, and yet had only given him 300*l.* per annum: but that Lord Lyndhurst, when Master of the Rolls, had given his clerk, whom he appointed to the same office, 700*l.* a-year; and, moreover, when any surplus in the fees occurred, he invariably desired him to put it into his pocket.' Some days after, Mr. Bickersteth settled the matter with me by giving me the appointment, and fixing the salary at 500*l.* per annum, saying, at the same time: 'I wish to pay you liberally and properly, but I object to heap upon you an income for which you will not have it in your power to return adequate services. I think Sir C. C. Pepys' arrangement was too low, but Lord Lyndhurst's is beyond my notion of what is right. I therefore take the mean between them.'"

dale there is hardly sufficient shade in his character to throw out his virtues in the relief that they deserve. A life spent in a constant exercise of good without evil, is like a boundless cultivated plain without the relief of rock and mountain, river and cascade.

When Lord Langdale retired from public life, Mr. Sanders, as the result of that retirement, was thrown out of office. This circumstance, in the eyes of some, has cast a shade upon Lord Langdale's retirement; but it was not in his power to secure the Secretaryship to him, or he would have done so. That he might, by asking, have obtained from other hands the means of rewarding the services of Mr. Sanders, cannot be doubted; but I have already more than once asserted that to ask for patronage was against his nature. Whatever he could himself do, he was prepared to do, but he had laid down a rule never to ask a favour, and he could not break through it, even under such urgent circumstances as these, it had become a part of his spiritual self. Had his only child been placed in the like predicament, love and affection would have been sacrificed to duty; the heart might have broken, but his conscience would have been at rest.

His kind feeling towards Mr. Sanders was sufficiently apparent, for whenever an opportunity occurred he was anxious to promote his interest, by engaging him in important duties of a public nature unconnected with the Rolls. Thus he brought him forward to act as Secretary to the Chancery Inquiry, in 1841, and he procured the insertion of his name as Secretary under the Royal Commission to inquire into the Registration

of Deeds, and the simplification of the forms of Conveyance.

It is a singular circumstance that during the fifteen years of Lord Langdale's tenure of office, no patronage became vacant except the comparatively unimportant office of Usher of the Court of Chancery, which he bestowed on Mr. Le Dieu.

Of the patronage of the Petty Bag, he had already in effect dispossessed himself, for he had determined not to supply any vacancy except temporarily, and with a view to a total extinction. The Six Clerks' Office he procured to be absolutely abolished, and the new office of Clerks of Records and Writs, and of Clerks of the Enrolments, he filled up by persons of the most experience, taken from the abolished establishment of the Six Clerks. No vacancy afterwards took place in either of those offices; and with respect to the Examiners' Office, the same gentlemen whom he found in place as Examiners when he ascended the Bench, continued such when he quitted it.

To my certain knowledge, the first adequate and permanent appointment which should fall under his power as Master of the Rolls, had long been destined to provide for and reward Mr. Sanders; but his intentions were, unhappily, frustrated by the state of his health, which abruptly compelled his own retirement from office.

The new Vice-Chancellor, Sir George Turner, most kindly endeavoured to alleviate, as far as lay in his power, the distressing situation in which Mr. Sanders was left, by appointing him his Secretary; it therefore gave Lord Langdale great joy when he heard of it;

and on the 2nd of April, 1851, his Lordship writes thus to Mr. Sanders (perhaps the last letter he ever wrote.) :—

"My dear Sanders,

"I most cordially rejoice at your appointment, however small and inferior to your merits—it is, in many ways, of great importance to you; and I am glad for Turner's sake as well as for yours: his kindness has been great—I suppose his appointment is certain, though I shall not write to him till I hear more.

You may see by my writing, which is caligraphy to what it has been, that I cannot do much to the papers which Bevan has been kind enough to get ready for me. I believe I must give up the hope of doing any more to them, and if you please I will send them to you.

I shall anxiously hope to hear of something else occurring for your benefit. Most truly yours,

Langdale."

Lord Langdale's next piece of patronage was the office of Deputy Keeper of the Public Records; and he gave it up to the Treasury for the purpose of effecting a saving in the retiring allowance of the gentleman who was appointed to it.

The third piece of patronage which fell to him did not come by right of his office, but by gift; I allude to the appointments of the Taxing Masters of the Court of Chancery, which Lord Lyndhurst, then Chancellor, gave up to him, stipulating only for the appointment of one

gentleman in particular, so that he left the nomination of the three others to Lord Langdale, the only limitation being, that by the act of parliament they must be solicitors. Lord Langdale accordingly, disregarding all the applications and recommendations of friends, looked, as in the case of the Records and Writs Clerks, to the abolished establishment of the Six Clerks to supply the required officers, and having found two whose practice and experience promised all that could be expected, he at once selected them; the third remained to be filled up. One gentleman was pressed upon him by two of the Vice-Chancellors; his qualifications were admitted, but his chance was small—he was a connexion by marriage. No fitter person, however, was thought of, and at last his Lordship assented to the appointment, saying, "It is hard that the fact of having married my cousin should stand in his way, especially as *I know* he is highly qualified for the office."

I have often heard this anecdote related, and by some called morbid conscientiousness, and by others a want of moral courage, by paying too much regard to the opinions of the world; but I am inclined to attribute it to cautiousness, or rather to a dread lest his private affection should, even against his will, influence his public conduct.

That Lord Langdale did not value his patronage is quite clear from the instances I have given above; and on the occasion of the Six Clerks' Office being abolished, which was chiefly effected through his instrumentality, he said, "I shall sleep sounder to night than I have done for some time, as I have done away with *sinecures*

in the gift of the Master of the Rolls to the amount of 5,000*l.* a year."

As to my own connexion with Lord Langdale I may mention that I had been for some time engaged in preparing a History of the Officers of the High Court of Chancery, when my intention became known to him, and he immediately placed the whole of his collection of manuscripts relating to the subject in my hands, and among them a list of the Lord Chancellors, Lords Keepers of the Great Seal, and Masters of the Rolls, with permission to make any use of them I might think proper. As this list was the ground-work of the volume I published under the title of "A Catalogue of the Lord Chancellors, Keepers of the Great Seal, Masters of the Rolls, and principal officers of the High Court of Chancery," I thought it right to dedicate the volume to him in the following words:—

"TO THE RIGHT HONOURABLE HENRY LORD LANGDALE, MASTER OF THE ROLLS, ETC.

"My Lord,

"Your high judicial station and eminent character would fully justify my desire to inscribe this volume to your Lordship; but as I am indebted to your kindness for the plan and principal portion of its contents, I should be ungrateful were I not thus publicly to express my acknowledgments.

If, however, I had not such an excuse for connecting your Lordship's name with these pages, your constant exertion for the advancement of historical and antiquarian literature, and the liberal access which you have

afforded to the important national muniments placed under your care as Keeper-General of the Public Records, would fully account for the liberty I have taken.

I have the honour to be, my Lord, with the highest respect, your Lordship's very humble and obliged servant, T. DUFFUS HARDY."

His Lordship, however, objected to the dedication on the ground that I had made too much of the assistance he had rendered, and requested me simply to inscribe the volume to him, which I did thus:—

"This work is respectfully inscribed to the Right Honourable Henry Lord Langdale, Master of the Rolls, &c., by his humble and obliged servant, Thomas Duffus Hardy."

His own copy contained the dedication, but he, on more than one occasion, refused to lend it on that account, and actually bought another copy to lend to his friends. Connected with this volume another anecdote occurs to me which is also very characteristic of his mind.

I sent him, of course, the first copy of the work that was made up, upon which he wrote immediately to thank me, and in his letter he said, "I confess that I regret a passage in the note about Lord Plunkett, '*on account, it is believed, of the strong dissatisfaction expressed by the bar at having a member of the Irish bar placed in that high office.*' It was an unworthy dissatisfaction, and the statement of its effects appears to me likely to be injurious."

On seeing me the next day he expressed much stronger dissatisfaction at my note. He said, among

other things, "The Irish bar would naturally object to have English Chancellors or English officers appointed in Ireland, if the English bar objected to have Irishmen appointed to high judicial offices in England." As his Lordship seemed to regret so very much the passage in the note, I cancelled the sheet, and removed the objectionable words. While on the subject of cancellations, I may mention another anecdote which shows the high tone of his mind. In my general introduction to the "Monumenta Historica Britannica," p. 11, No. I. I quoted a passage from the "Quarterly Review," vol. xxxiv. p. 295, which was said to be written by Sir Francis Palgrave, Deputy Keeper of the Public Records; the passage was this—"Bishop Gibson writing July, 1694, to Dr. Arthur Charlett, Master of University College, says, "Sir John Marsham's collection must be considerable. There is a curious 'Ingulphus' in your library, which, as his family says, Obadiah Walker stole from him. I told him what they lay to his charge. His answer was, that Sir John gave it to him; and that, as an acknowledgment, he presented him with some copies of the 'Ingulphus' printed at Oxford. It is very probable, though, Sir John did not design to part with the books; nay, he used to be complaining of Mr. Walker for using him so unkindly; *but the old gentleman has too much of the spirit of an antiquary and great scholar to think of stealing a manuscript any sin. He has ordered me not to discover where it is lodged.*"

The passage in italics Lord Langdale desired might be omitted, or marked with the indignation it deserves. He said such a statement coming from a Bishop, and

brought forward by the Deputy Keeper of the Records, and cited by one of the Assistant-Keepers of the Public Records in a grand national work, published at the expense of the Government might lead people, and foreigners especially, to think it was held no sin in a great scholar and spirited antiquary to steal a manuscript; the objectionable passage was accordingly removed.

It is not from a separate analysis of a man's public or private life, that we can judge of him correctly; both must be taken in conjunction; for he who is stern and inflexible in public, is often mild and complying in private, and the hero and philanthropist abroad is frequently contemptible and mean at home. We must view a man within and without the domestic circle, if we would form a true estimate of his character.

Lord Langdale was essentially a domestic man; his tastes were simple and refined, and there never existed a human being who more thoroughly enjoyed home pleasures, especially after sitting the whole day long in a crowded court, exerting his brain, and labouring to discover right from wrong. Home was to him a haven of rest; there in the society of those he loved he enjoyed a brief repose from the harassing cares of office.

One of the few relaxations he allowed himself was riding with Lady Langdale, and when their daughter was old enough she was added to the party. In their little excursions he would not allow anybody to take care of her but himself, and until she was old enough to guide her pony, he invariably held her leading rein. To her, his only child, he used to devote a great portion of his few moments of leisure. She used to be

brought, when an infant, into his library after dinner, and he would amuse her by playing at the game called follow my leader, through the intricacies of chairs and tables, and at hide and seek.

When she grew older, she used to sit perched on the library steps engrossed by a book, while he worked before breakfast, deep in papers.

He would, when not overpressed by business, teach her some simple scientific matter, such as he deemed it would be useful for her to know. Her earliest religious ideas were imparted by him. He read aloud most admirably, particularly poetry, and was most anxious to teach her to do so likewise. In the half hour before breakfast, he would hear her read Milton aloud, and would make her read some passages over five or six times, until he was satisfied with her rhythmical enunciation.

Speaking of her lamented father, Miss Bickersteth writes:—

"When he had any friends with him in the library whose conversation he thought I could understand, he always called me in, and I have often sat there listening for a long while together.

His love of neatness was exemplified in the garden by his dislike to seeing any weeds in the turf, or any unevenness in the ground; not that he disliked slopes, but wished them to be regular. He would sometimes be jokingly vexed with my mother for not sympathizing in the grievance of double slopes. The garden at Roehampton was entirely planned by him, and he carefully made all the beds in true mathematical figures, and,

strange as some of them looked, I believe they might all be found in Euclid.

In his library he was very particular about the catalogue, and had two,—one alphabetical, the other a press list; but these were practically of little use to him, from his constant love of changing the places of the books, partly to make room for new comers, partly to change; and while he was well enough to be interested and busy, a vacation rarely passed without a general re-arrangement; however, he always knew where every book in the house was to be found.

While he was well enough, philosophical books were what I think he preferred. He always took great delight in the writings of J. S. Mill, and James Mill. He was very well read in French literature, one of his favourite writers being Daunou; Guizot, too, and Thierry, Michelet (for amusement), and Mignet; Auguste Comte he thought heavy and unreadable, but liked Victor Cousin. He was fond also of French memoirs, and was amused by turning over the modern Socialist pamphlets.

Bacon, as you know, was always a special favourite, and in the same catalogue may be put Locke. As to Bacon, he never travelled without the 'Apophthegms,' 'Novum Organum,' and 'De Augmentis,' which he carried in his desk, with 'Tasso's Aminta,' and 'Redi's Bacco in Toscana,' and these five little volumes were such especial favourites, that though unable to do anything else, he packed them up himself the day before he went to Tunbridge Wells. The Bacon, indeed, was the last book he ever read. He always took delight in the chief English poets, and having a very excellent

memory, would often quote passages he had learnt in youth.

As a boy he was an excellent botanist, walking twelve miles and back in search of rare plants, which he used to dry on his return, and preserve. His love of this science always remained unimpaired.

Such a man had, of course, an intense admiration of the heroic. From old recollections of Italy, he took a lively interest in the fate of that country, particularly in the resistance of Venice to the Austrian arms. He greatly admired the present Prime Minister of Piedmont, Massimo D'Azeglio.

The two men that I think he the most admired, were Sir John Moore and General Sir C. Napier, whose campaign in Scinde he greatly praised.

The love of children was a remarkable point in his character from the earliest age. I must not omit one trait belonging to his love of children. The day before his last journey to Tunbridge Wells he was more indisposed than usual, and was lying on the sofa, when his servant maid brought in a little orphan baby, the child of one who had been his servant. He desired to look at it, and I suppose the infant was pleased with his countenance, for it smiled and held out its little arms to be taken by him. He took it and fondled it, and seemed all the better for its visit."

He used often to insist on the necessity of a mediator in the bringing up of children, and how they were to be encouraged in their penitence when a fault had been committed.

There was hardly any subject on which he would be

so serious as concerning the responsibility of parents; he used to call it awful, and to say that no action, no word, however slight, was done or said without leaving its trace on the child's mind.

After his family and his books the garden was a great source of pleasure to him; he made plans on paper, and afterwards worked them out by rule, on the ground itself, for the flower-garden at Roehampton, and it was a great solace to him to walk or sit there after the fatigues of the day.

He used to carry acorns or bits of sugar in his pocket to give to a young foal he kept in the meadow adjoining to the garden; and this animal knew his step, and used to come galloping to meet him.

He was peculiarly kind, hospitable, and attentive to the comfort of those beneath his roof. Mr. Sanders, speaking of his visits to Templeton House, says, " Lord Langdale's habit was to show me to my bed-room; and himself to see that I was provided with the proper comforts and conveniences."

He was peculiarly kind to the servants of his house, from the highest to the lowest. He used to say that they formed a *part* of his family, and had a right to his consideration and kindness.

Once when his servant Edward was taken ill, he had his knocker tied up, and the bell muffled; and also put off a formal dinner-party, lest the noise and bustle might be too much for him. He even attended the bed-side of the patient, and himself gave him medicine, because he had refused to take it from any other hand.

This man, however, presumed too much upon his mas-

ter's kindness, and lost his situation; but Lord Langdale gave one hundred guineas to set him up in business.

It was not only to the inmates of his own house that he extended his care and attention. He considered it the duty of heads of offices and establishments to afford all the protection, countenance, and support in their power to those under them; and in every instance where occasion offered he put his theory into practice.

One of the messengers of the Public Record Service had leave of absence given to him for a week, and before leaving the office for the holiday packed up his working or office-coat in a sheet of brown paper, to take home to get repaired. One of his fellow-workmen, formerly in the City Police, had a spite against him, and as soon as he left the office followed him, and gave him into the custody of the first policeman he met for having in his possession a sheet of paper which was public property. The man was taken to the police office, locked up all night, and carried on the Monday following before the magistrate, who, having heard the charge, committed him to Newgate for stealing a sheet of the public paper, valued at one farthing. On the matter being reported to Lord Langdale he sent for his own solicitor, and desired him to have the man defended at his trial with as much care as if he were his own child; and Mr. Bannatyne and Mr. Hobler were engaged for the defence. The grand jury, however, on hearing the bill, instantly ignored the bill with strong expressions on the impropriety of its having been sent before them.

Lord Langdale then gave the messenger a long lecture on the necessity of never appropriating anything

that was not strictly his own. He said that no one would be justified in even writing a letter on private business on the Government paper, and though he believed it was done by every person in the public employment from the first Minister of the Crown, yet, nevertheless, it was wrong.

He then paid the solicitor's bill out of his own pocket. Upon the man thanking him for his kindness he stopped his thanks, saying, "I dare say you would have done as much for me had you been in my place and I in yours."

His sense of honour was keen almost to fastidiousness, as the following anecdotes will exemplify.

In his chambers in Fig-tree Court, Temple, before he had a silk gown, there was a little room, a favourite one in summer, in which he could never sit in the winter, for the chimney smoked beyond endurance, and he had tried all manner of experiments to cure it. On being made King's Counsel he found it necessary to remove to a more eligible position, and of course wished to let the chambers he then occupied, but he was in a state of some excitement lest the laundry woman should not tell every person who applied for them that the chimney smoked, so he wrote in large letters on a sheet of paper, and placed it over the mantel piece in the room, "The chimney of this fireplace smokes incurably, and every experiment has been tried to remedy the evil and no expense spared."

He had purchased a blood-mare for eighty guineas, which he found was given to shy; and she one day threw him, and injured him considerably,—he was, consequently, persuaded to sell her; and though two or three

of his friends offered to buy her at the price he gave, he refused, but sent her to the Horse-mart with a certificate, which he made the auctioneer read when the lot was put up, stating that the mare was very much addicted to shying, and had thrown its owner and very much injured him. One of the friends to whom he had refused to sell it, nevertheless bought her at the public sale for 25*l.*, and had her for several years.

I have frequently had occasion to mention his conscientiousness—the following anecdote is very characteristic of that feeling :—

His Lordship had desired Mr. Le Dieu, his first gentleman of the chamber at the Rolls, to keep a book in which he entered minutely, every day, a record of the times of the sitting and rising of the Court, of the causes and motions heard, and of the judgments delivered.

On Mr. Le Dieu wishing to show this book (of which he is rather proud) to Vice-Chancellor Wigram's clerk, for the purpose of making it appear how regular his Lordship had been in his sittings, and how much business had been got through, Lord Langdale objected to his doing so, saying,—"It was made for my private information only;" adding, "I keep a stricter account between my conscience and myself than I intend to keep between myself and the public."

The peculiar delicacy of his character frequently induced him to allow another to receive the credit that was due to him; for instance, when Lord Cottenham moved an amendment in the Drainage Bill, he made no allusion to Lord Langdale, who had sat up three or four hours the previous night, framing the very amendment

which was so approved. "You see," said Lord Langdale on that occasion, "how public history differs from private truth."

Indeed it may be safely stated, that most of the late Chancery reforms were suggested by himself, and carried out by others, who never gave him any credit for his thought or assistance.

He had a great dislike to attract attention towards himself, and he would suffer any inconvenience rather than do so. Since he had been suffering from the gout he had been accustomed to have a footstool put on the bench, but as Mr. Le Dieu did not come to put it there till just before his master was going into Court, when it was, of course, full,—Lord Langdale would not let him take it at all, and said,—"I believe these people like making a fuss; all the Court would be staring if he were to take it now. I used to have tea for luncheon at first; but one day I heard Russell, the usher, crying out, — 'Make way there for the Master of the Rolls' tea,' and I never could bear to have it afterwards."

Lord Langdale hated idleness, and was never without occupation of some sort; if he was not engaged in getting up his judgments, he was sure to employ himself upon some other public business, such as the Record Service, the Registration Commission, or framing orders in Chancery; or drawing bills and clauses to effect some reform in judicial matters.

"After breakfast," writes Mr. Sanders, "I walked over to Roehampton, and called upon my Lord. He was very well, and said that the long vacation and the fine weather, made him very idle. Talking of the Seckford

Charity, he said:—He wanted to collect and hand down to his successors, an account of the several matters in which the Master of the Rolls is concerned: such as the Seckford Charity, Queen Elizabeth's College, British Museum, Ecclesiastical Commission, Reduction of the National Debt, Caledonian Canal, &c."

Though he made every excuse for the errors of others, he scrupulously watched his own. He often said that conscience, in ninety-nine cases out of a hundred, would determine whether actions were right or wrong. He was never exactive, unless by being passive he seemed to countenance a wrongful act; then his notions of justice and right forced him to require others to perform the duties he exacted from himself.

CHAPTER XXI.

FAILING HEALTH OF LORD LANGDALE.—HE RETIRES FROM THE BENCH. —PARALYTIC SEIZURE.—DEATH.—THE TRUTH HIS BEST EPITAPH.

Up to the year 1848, Lord Langdale's health was generally good, and he was never out of spirits except when he felt languid and unwell. He was, however, subject to the gout, and, speaking of it, he said, "When the gout is once out, it does not affect my spirits or my temper. The only thing that affects my temper is my liver being out of order, and then I am as cross as the very deuce."

In the month of January, 1844, he complained of feeling very cold in his legs, so much so that he used frequently to sit in Court with a shawl thrown over them, and on the 18th of that month, he was seized with a numbness in the legs and thighs, but nothing serious then arose from it, and he continued to enjoy his usual health until 1847, when, as he was leaving the Privy Council Office, on the 24th of June, on descending the last of the door-steps, he fell at full length on the pavement in the street. He was much bruised and shaken, yet he would sit in Court the next morning, though looking very unwell. This was evidently some affection of the brain, as he fell as if he had been shot, without a slip.

The sittings of Easter Term, 1848, commenced on the 10th of April, on which day Lord Langdale took his seat at ten o'clock, but was so very unwell (having, indeed, been seriously ill during the holidays) that after disposing of a few urgent matters, which occupied about half an hour, the Court rose, and at the urgent solicitation of the bar, was adjourned until the following Saturday, 15th of April, being the first day of Easter Term, but before he left the Court he wrote to the Lord Chancellor to tell him of it. During seven days of these sittings the Master of the Rolls was too much indisposed to attend to business; and it may be here stated that up to this time he was never absent from his Court on any cause whatever, except when his judicial business called him elsewhere. He was again taken ill while sitting at the Judicial Committee of the Privy Council, on Saturday, the 3rd of July, 1848, and was obliged to leave.

On the 28th of February, 1849, he had another fall at his own home, down a step which he did not see, and bruised his forehead badly; he said, however, that the fall did not in any way arise from giddiness of his head.

I am now approaching towards the close of Lord Langdale's judicial career.

In the long vacation of 1850, it was his Lordship's turn to perform the duty of the vacation judge; he himself having introduced the practice of an Equity Judge attending to urgent business during the long vacation.

In consequence of the illness of the three judges of the Court of Chancery, the amount of additional labour

thrown upon the remaining two was enormous. On the death of the Vice-Chancellor of England it was not deemed expedient to fill up the place, because the act of Parliament had provided that the third Vice-Chancellor should not be a permanent appointment, and Sir James Wigram had not then resigned. Owing to all these causes, at the conclusion of the regular sittings of the Court of Chancery, much business remained undisposed of, and Lord Langdale sat in his private room at the Rolls for many days, from ten in the morning till near six in the afternoon, to the manifest injury of his health. At length, on the 17th of September, he became so seriously ill, as to be compelled to cause the withdrawal of the notice, that the Master of the Rolls would attend to urgent business in the long vacation. Dr. Paris, who was consulted, in addition to Lord Langdale's ordinary medical adviser (Mr. Newton), peremptorily forbade all mental application, and almost as peremptorily recommended removal from home.

On the 1st of October (as soon as it was deemed safe to travel), he went to Tunbridge Wells, and the bracing air of that place, joined to "leading the life of a cabbage," as he expressed it, produced so favourable a change, that he insisted on returning home, after about a fortnight's absence, but he was still unable to attend to business.

He resumed his attendance at his Court at the opening of Michaelmas Term, and during the Christmas vacation was so much better, that he completed four or five judgments, which he had been obliged to reserve from the sittings of 1850.

On the 19th of January, 1851, Lord Langdale completed his fifteenth judicial year; the period the country has considered necessary for a judge to hold office before he is entitled to a retiring pension for his services. But one of his predecessors had sat in the same justice-seat for so long a time, and none had given more general satisfaction to suitors, to his bar, his officers, and the public than himself, but his increasing ill health rendered it necessary for him to cease from his labours.

He had signified as much to Lord John Russell during his indisposition in the autumn of the preceding year, and the Premier, on the 17th of December, requested him to delay his resignation for a short time. The ministerial crisis, however, occurred about the middle of February, and Lord Langdale, with his usual kind feeling for others, was much impressed with the danger of disappointment to which the Attorney-General (whom public rumour designated as his probable successor) might be exposed on the sudden vacancy of the Rolls; and he, therefore, declined sending in his resignation until the crisis was over.

Few men can take leave of an office or a profession which has occupied the principal portion of their lives without deep emotion; the mind will recall the various scenes of joy and sorrow, of struggle and prosperity, it has witnessed during the time. Where want of success and failure in our enterprises have entirely arisen from our own fault or incapacity, and we have missed the goal towards which thousands in common with ourselves, have been hastening, the predominant feeling of

the mind is disappointment, perhaps disgust, at opportunities lost, or at our own inefficiency to cope with, or perform duties required for the occasion, the emotion at taking leave of an occupation under such circumstances is not of the pleasurable or enviable kind;—but when the eminent man leaves an employment through which his success has arisen, and he takes a glance at the occasions which produced the line of action which tended towards the consummation of his wishes, there will be a sense of pious thankfulness to the Disposer of Events, for giving him the opportunity, as well as the ability, to make it available to himself. The great prizes in the game of life are few in number, not one in the million to the blanks, and those who obtain them ought to feel that they have been especially selected by Providence to fulfil some great end in view of the Almighty's mind. If such be the case, and which of us will dare to doubt it? how awful must be the responsibility of a Judge—he who is chosen to administer justice between man and man, to dispense on earth what God himself will dispense in Heaven!

It is a solemn thought, and he who has a true sense of his position must feel deeply the serious obligation of his office. A Judge should be a stranger to prejudice, injustice, and revenge, and if any of those feelings has ever actuated a single decision, a sense of shame must oppress him when he bids farewell to that seat that has been dishonoured by the act; but the conscientious and upright man, who has endeavoured to the utmost of his power to dispense justice to all, and show favour to none; who has spared neither pains nor time

to unravel the knotty and complicated points which ignorance, design, or indifference created, must feel an elevated pride: and surely no Judge who ever graced the British Bench could, in regard to the scrupulous uprightness of his decisions, take a higher place than Lord Langdale.

On the 4th of March, 1851, Lord John Russell sent the following short note to Lord Langdale:—

"My dear Lord Langdale,

"As when I saw you in January I asked you to delay your resignation that we might not have new elections at the very moment of the meeting of Parliament, I write now to say that I do not wish any further to interfere with your health or convenience.

Yours truly,

J. Russell."

Lord Langdale immediately wrote to Lord John, stating his readiness to send in his resignation, if he could inform him to whom it should be addressed; and upon learning that it might be sent either to the Home Secretary, or to the Lord Chancellor, he wrote the following note to Sir George Grey:—

Rolls House, 7th March.

"Sir,

"I beg leave to acquaint you that the state of my health, and other reasons, induce me to wish to retire from my office of Master of the Rolls.

Having had the honour to hold the office for fifteen years, which were completed in the month of January

last, I trust that her Majesty's Government will consider me to be entitled to the usual retiring pension, and in that confidence I beg the favour of you to present my humble duty to the Queen, and on my behalf to pray that her Majesty will be graciously pleased to accept my resignation at a convenient time.

I have the honour, Sir,
To remain your obedient humble servant,
LANGDALE."

The Ministerial crisis having passed, and the promise of the Mastership of the Rolls having been made to the Attorney-General, it was arranged that Lord Langdale should continue to hold office until the end of the then sittings.

Partings and leave-takings are generally painful episodes in a man's life. But the farewell of a public officer is, perhaps, the least sorrowful of any. Those with whom he has been more closely connected, with a few exceptions, look to the in-comer rather than to the out-goer for advancement, — moistened eyes or dejected looks are not often exhibited at a parting address, especially of a Judge, on taking leave of his bar. Fifteen years of almost daily intercourse must, however, create a certain degree of attachment, especially when, in that intercourse, the graver and nobler feelings of humanity have been drawn out, and mingled up with those of the more gentle and amiable character. Between Lord Langdale and his bar there existed the warmest feelings of respect. He, by his untiring patience, his efforts, and his urbanity, had succeeded in

winning their esteem, if not their affection; and they, by their learning, their integrity, their sagacity, and their prudence, were honoured by his entire confidence.

On the 25th of March, after the disposal of business in the paper for the day, Mr. Turner rose, and said,—

"My Lord,—The business of the day being now concluded, and your Lordship about to retire from that position on the bench, which you have so long and so ably filled, I am desired by the Bar publicly to express to your Lordship their deep regret that the state of your Lordship's health has compelled your resignation; and their earnest and anxious hope is, that many years may yet be spared to you, of happiness in the bosom of your family. My Lord, it would ill become me on such an occasion as the present, to enter into an examination of your Lordship's judicial career. Such a proceeding on my part might savour of flattery, and be offensive to your Lordship; or, on the other hand, might be cold, and insufficient, and unsatisfactory to the Bar. I therefore abstain from entering at any length into the subject, but there are matters connected with your Lordship's tenure of office, which I feel bound to notice on the present occasion. My Lord, the Bar, the profession, and the public, are deeply indebted to your Lordship, for the exertions that you have made during the period you have held office, to simplify the process and practice of the Court, and to reduce the delay and expense incident to proceedings in it—efforts which have led to beneficial results, and which, I think, will lead to consequences yet more

beneficial. My Lord, the public owe to your Lordship a debt of the deepest gratitude for the untiring patience with which your Lordship has investigated the most complicated transactions which have probably fallen to any Judge to deal with. The Bar, my Lord, owe to your Lordship a debt, probably of scarcely less extent, for the order and regularity which have prevailed in this Court during the period you have presided in it, and which promoted the best feeling between the members of your Lordship's Bar, and been conducive to the administration of justice, and have eased the labours of the Bar, and I trust, have also eased your Lordship's labours. My Lord, in conclusion, I have to express to you the heartfelt feeling of the Bar, that you may continue in the enjoyment of health and happiness, discharged from those duties which we fear have pressed too heavily upon you."

Great applause was manifested by a crowded court. His Lordship, who was much overcome with emotion, impressively replied:—

"I confess that I am overpowered. I am deeply sensible of the kindness of the expressions that you have used towards me, and I am truly grateful for them. If I could flatter myself that I, in any adequate measure, deserved such approbation of the Bar, I should indeed be greatly satisfied; I can claim no merit but the single one of having used my best endeavours to perform my duty, and nobody can be more conscious than I am of the short-comings of my endeavours adequately and fully to perform the duties of an office so difficult. I can attribute the kindness of your expressions only to

the indulgence that you have offered me, and your disposition to give a favourable construction to my conduct, but at a cooler moment there will be, no doubt, a stricter scrutiny, and the conduct of myself, and many other judges, will have to be tested by the reports and history which, while they show what has been done, or tried to be done, will at the same time prove how much, how deeply indebted we are to the learning and intelligence of the Bar that has practised before us. I wish to add, that honourable and upright professional men, in whatever grade they may be found, are, certainly, in my view, among the most useful ministers of justice. Little do those think who observe only the outside appearance, how little is, or can be done by the judge alone without that asistance which he receives from the sagacity, the industry, the integrity, the learning of those to whose assistance he ever must be mainly indebted for the successful performance of the duties of his office.

Gentlemen, I am unable to proceed further. I am aware that no one has enjoyed more assistance in that way, than I have done. I feel deeply grateful for it, and shall ever retain the strongest sentiments. Farewell ! "

His Lordship was deeply affected during the delivery of his address, and a crowded court, with many a weeping eye, manifested the greatest sympathy with the retiring judge.

On leaving the Court, Mr. Turner, Mr. Walpole, and Mr. Monro, begged for private audiences with him—to take their leave—after which he returned to Templeton, overpowered with emotion.

On the 28th of March, Lord Langdale left Roehampton at the usual hour, and went direct to the Lord Chancellor's private room in Lincoln's Inn, and signed the surrender of his office of Master of the Rolls in the presence of the Lord Chancellor, Sir John Romilly, and many other public functionaries. The act of resignation performed, the train swept into Court,* and the retired Judge was left alone with his Secretary, Mr. Sanders, to whom he said, despondingly, "Well, you are the last with me—the rest are all gone!"

The following touching account of Lord Langdale's last moments and death was written by his daughter. I give it in her own words, believing that its affecting simplicity would be destroyed by any comment or addition of mine.

"On his returning to Roehampton he seemed in better spirits; his official life was now over, and he might with a safe conscience grant himself repose—but repose had come too late—the oil of life was spent. His body, worn out by unceasing labours, failed, and on the very evening of his resignation appeared the first clear symptoms of his fatal malady.

Aided by his early medical training, he had himself divined the truth, and but a few weeks before had asked his medical attendant, 'What is it you fear? Is it paralysis?' There was no evading an answer with such a man, and an affirmative reply was returned. Yet as this dread was fear, not certainty, he concealed it with the greatest firmness; and it was not until after

* Sir John Romilly was sworn in, as Master of the Rolls, in Court, and not in the private room, as Lord Langdale had been.

his death that his family found in it the key to many dark hints he had thrown out in moments of deep dejection. Yet these symptoms passed off in a few minutes. For the next fortnight he appeared much the same, or, if anything, rather worse; his hands less serviceable, and more difficulty in reading or doing anything which required him to fix his eyes. Lord Langdale had been ordered by his doctors to go to Tunbridge Wells, as the air had done him so much apparent good the preceding autumn; and, on the 10th of April, he accordingly went there. This day he appeared considerably better, and continued so to seem throughout the evening. Fallacious appearance! About two o'clock the next morning, he was seized by the fatal paralysis, which almost instantly rendered him speechless, and utterly disabled the right arm, side, and leg.

His usual medical attendant, Mr. Newton, was summoned from London by electric telegraph; and in conjunction with Mr. Hargreaves, the surgeon of the place, cupped him, but this produced little effect.

On the Sunday, his brother, Mr. Robert Bickersteth, arrived from Liverpool, and entirely approved the treatment hitherto pursued. Till the morning of Wednesday, Lord Langdale seemed no worse, no weaker, and therefore in such a case better; but from that moment the case was changed; in spite of stimulants constantly administered he sank gradually, but surely, from hour to hour. Calm, sublimely patient, he retained his perfect consciousness, and, doubtless quite aware of the impossibility of recovery, he awaited the hour of death with

entire resignation, and without betraying impatience by a single gesture throughout this trying week.

On the morning of Friday, the 18th of April, the early rays of the sun streamed into the chamber of death. At eight o'clock, Lord Langdale was no more. He had passed with scarce a sigh to the world where there is no care. The following Thursday his remains were laid, according to his right as a Bencher, in the vault of the Temple Church.

Here let no useless eulogium be passed on the dead. If in the tale of his life, simply told, his greatness of mind, and his high character have not amply appeared, no set form of description or praise could avail; and if they have, any further account would be useless to adorn him to whom the best homage is truth."

APPENDIX.

JUDGMENT IN THE SUIT OF THE DUKE OF BRUNSWICK *v.* THE KING OF HANOVER.

JUDGMENT IN THE SUIT OF WHICKER *v.* HUME.

EXTRACT FROM THE JUDGMENT IN THE SUIT OF THE ATTORNEY GENERAL *v.* CAIUS COLLEGE, CAMBRIDGE.

APPENDIX.

I HAVE thought it advisable to give two of Lord Langdale's judgments entire, as the best mode of enabling the reader to form a notion of his talents and powers as a judge, for in that capacity he will hereafter himself be judged by his fellow-men. That in the suit of the Duke of Brunswick against the King of Hanover, is profound and logical, and exhibits his extensive acquaintance with Civil and International Law. The case of Whicker *versus* Hume, shows how entangled and contradictory statements may be made perfectly clear and reconcilable when unravelled and explained by the patient and accurate investigation of a legal and philosophic mind.

LORD LANGDALE'S Judgment in the suit of the DUKE OF BRUNSWICK *versus* the KING OF HANOVER, delivered 13th January, 1844.

This case came on to be heard for argument on a demurrer to the Bill for want of jurisdiction, and for want of equity.

The Bill is filed by his serene Highness Charles Frederick William Augustus Duke of Brunswick, against his Majesty the King of Hanover, who is sued as his Royal Highness Ernest Augustus Duke of Cumberland

and Teviotdale in Great Britain, and Earl of Armagh in Ireland.

The Bill prays that it may be declared that a certain instrument or writing in the Bill mentioned to be dated the 6th day of February and the 14th day of March 1833, and the appointment of his Royal Highness the Duke of Cambridge as guardian of the fortune and property of the plaintiff thereby purported to be made, and of the persons purported to be appointed administrators and managers under him; and the subsequent appointment of the defendant as such guardian, are absolutely void and of no effect; and that it may be declared that the defendant is liable, and ought to account, to the plaintiff, for the personal estate, property, and effects, and the rents, profits, and produce of the sale of the real estate of the plaintiff, possessed by the defendant, or any person by his order or for his use, or any person having acted or purported to act under any appointment, as administrator or manager under the defendant, since his appointment as guardian by virtue of the instrument of the 6th of February and 14th March, 1833, including therein the personal estate and effects, rents, profits, and produce of the real estate, paid or accounted for to the defendant by the Duke of Cambridge. And that such accounts may be accordingly taken, the plaintiff offering, on the taking of such accounts, to make the defendant all just allowances.

For this purpose the Bill states, That in the year 1830, the plaintiff was the reigning Duke of the Duchy of Brunswick, and was in his private character or capacity possessed of or entitled to real and personal property

in Brunswick and in England, Hanover, France, and elsewhere in Europe, to a very considerable value; That the Duchy of Brunswick borders on the kingdom of Hanover, and that in the month of September, 1830, his late Majesty King William the Fourth was king of Hanover, and his Royal Highness Adolphus Frederick Duke of Cambridge was Viceroy of Hanover, acting under the authority of his late Majesty King William the Fourth; That pending a revolutionary movement in Brunswick, a Decree of the Germanic Diet of Confederation was made on the 2nd of December, 1830, whereby the plaintiff's brother, William Duke of Brunswick, was invited to take on himself provisionally the government of the Duchy, and the Diet left it to the legitimate dynasty of the plaintiff to provide for the future government of the Duchy; And that in February, 1831, his late Majesty King William the Fourth, and William Duke of Brunswick, claiming to be legitimate agnati of the plaintiff, caused to be published a declaration, whereby they purported to dethrone the plaintiff from the throne of the Duchy, and declared that the throne had passed to Duke William; And that after this declaration was made, it was signed by their Royal Highnesses, the Duke of Cumberland (the present defendant), the Duke of Cambridge, and the Duke of Sussex, and that in pursuance of the declaration, William Duke of Brunswick took upon himself the government of the Duchy, and he has ever since exercised the rights, powers, and authorities of Sovereign Duke of Brunswick.

The Bill then proceeds to state, that early in the year 1833, an instrument in writing, dated the 6th of Febru-

ary and the 14th of March in that year, signed by his late Majesty King William the Fourth, and by William Duke of Brunswick, was promulgated by them, and was to the effect following, viz. :—"We, William the Fourth by the grace of God King of the United Kingdom of Great Britain and Ireland, and of Hanover, Duke of Brunswick and of Lunenburgh; and we, William, by the grace of God Duke of Brunswick and of Lunenburgh, make known what follows: Moved by the interest of our house, whose wellbeing is confided to us, and yielding to a painful but inevitable necessity, have thought it necessary to consider what measures the interest (rightly understood) of his Highness Charles Duke of Brunswick—the preservation of the fortune now in his hands, the dangers and illegality of the enterprizes pursued by the said Duke, and, lastly, the honour and dignity of our house—may require; and after having heard the advice of a commission, charged by us with the examination into this affair, and after having weighed and exactly balanced all points of fact and law; And whereas, after the dissolution of the German Empire, the powers of supreme guardianship over the princes of the empire, which up to that period had appertained to the Emperor, devolved on the heads of Sovereign States :—We, taking into consideration the laws and customs, and by virtue of the rights unto us belonging, in quality of heads of the two branches of our house, have decreed as follows :—

Art. I. Certain facts, either notorious or sufficiently proved, have caused us to arrive at the conviction that his Highness Duke Charles is at this time wasting the fortune which he possesses in enterprizes alike impos-

sible and dangerous, both to himself and other persons, and is seeking to damage the just claims which certain persons now or hereafter may legally have upon his property; we have consequently considered that the only method of preserving the fortune of his Highness Duke Charles from total ruin, is to appoint a guardian over him.

Art. II. In consequence of this conviction, we decree, that Charles Duke of Brunswick shall be deprived of the management and administration of his fortune. A guardian shall be appointed, whom we shall choose by mutual consent from amongst the very noble or noble male scions of our house, although the right of choice belongs to the legitimate Sovereign of the Duchy of Brunswick, in virtue of his title alone.

Art. III. His Royal Highness the Duke of Cambridge, Viceroy of Hanover, having declared that he will willingly accept such guardianship, we confide the same to his Royal Highness by the present decree, which he will be pleased to consider as constituting his title to such guardianship.

Art. IV. As his Royal Highness the Duke of Cambridge cannot, by reason of his position, by himself alone, exercise the functions of guardian, he is authorized to limit himself to the functions of supreme guardian, and to substitute for the management and administration of the property, one or more persons who under oath will proceed in their own name, and on their own personal responsibility, to make an inventory of the same, and to take measures for the preservation and administration of the fortune placed under the guardianship of his Royal

Highness the Supreme Guardian, who is to be at liberty to grant them fees proportionate to their duties.

Art. V. The administrators shall render an annual account of their management to his Royal Highness the Supreme Guardian, who shall be asked to transmit the same to us, that we may cause the same to be settled and approved. Our confirmation shall be applied for in all cases wherein the laws require the consent of the Supreme Guardian.

Art. VI. The guardianship is to be considered as legally established in Brunswick, where it is to have its locality.

Art. VII. The present decree shall be published in the Bulletin of the Laws of the Kingdom, in accordance with the usual forms, and all whom the same may concern are bound to render obedience thereto.

Given at our Palace of St. James's, 6th of February, 1833, and at Brunswick, 14th of March, 1833. We have signed with our proper hand, and have placed our Seal. William (L. S.); William Duke (L. S.); The Baron Ompteda Schleinitz."

To this instrument was subjoined a note, which was signed by the defendant, then Duke of Cumberland, and by the Dukes of Sussex and Cambridge, to the effect following: "We, the undersigned, have acknowledged with gratitude the foregoing arrangement adopted by his Majesty, in accordance with his Highness the reigning Duke of Brunswick, in the interests well advised, of his Highness the Duke Charles of Brunswick, for the preservation of the fortune remaining in his hands, for the maintenance of the public peace in the Duchy of Brunswick and in the Kingdom of Hanover, and for the honour and dignity of

the great House of Brunswick Lunenburgh,—another proof of the foresight of his Majesty and of his Highness for the wellbeing of that house. We solemnly attest the declaration by these presents signed with our hands, and to which we have placed our seals.—London, 6th of February, 1833, Ernest (L. S.); Kensington, 3rd of February, 1833, Augustus Frederick (L. S.); Hanover, 13th of February, 1833, Adolphe (L. S.)."

The Bill then states, That the plaintiff is advised as the fact is that the said instrument is absolutely void and of no effect, but that nevertheless the Duke of Cambridge accepted the appointment of Supreme Guardian of the plaintiff's fortune and property, took possession of the real estates to which he was entitled in his private capacity at Brunswick, and took possession of all such parts of the plaintiff's property in Brunswick and elsewhere of a personal nature, as he could discover, to the amount of several hundred thousand pounds in the whole; that he sold and converted several parts thereof into money, and made certain payments on account of the plaintiff and of his property, but that, after allowing for such payments, there remained in his hands a very large surplus unaccounted for; That King William the Fourth died on the 28th of June, 1837, and thereupon the present defendant became King of Hanover, and the Duke of Cambridge having resigned his appointment of Guardian by some instrument in writing, to which the defendant was a party, and which was signed by him and by William Duke of Brunswick, the defendant was purported to be appointed Guardian of the plaintiff, and of his fortune and property, in the place of the Duke of

Cambridge, under the instrument of the 6th of February and 14th of March, 1833, and with all the same powers and authorities as was thereby purported to be conferred on the Duke of Cambridge; That the Duke of Cambridge accounted for his receipts and payments to the defendant, and payed him the balance, and that the defendant took possession of the plaintiff's property, and he received large sums of money on account thereof, and has thereout made some payments on account of the plaintiff, but that a very large balance or surplus, to the amount of several hundred thousand pounds, remain due from the defendant to the plaintiff on account thereof; And that the defendant refuses to comply with the plaintiff's application for an account thereof.

The Bill charges that the Instrument of the 6th of February and 14th of March, 1833, and the appointment of the Duke of Cambridge as Guardian, and the appointment of the defendant as guardian, are wholly invalid, according to the laws, as well of Brunswick, and of Hanover, as of Great Britain, but that under colour thereof, the Duke of Cambridge and the defendant respectively, took possession of the plaintiff's property on his behalf, and not adversely.—That by the law of England, such appointments of guardian and all the rights thereby purported to be given, are void, even if the same were valid by the law of Brunswick. And if the same were valid at the time when the same issued, having regard to the circumstances and situation of the plaintiff at the time (which, however, the plaintiff denies), there is now nothing in the circumstances, or conduct, or state of mind, of the

plaintiff, to debar him from the full right and power of enjoyment, and disposition of his property.

There is a charge, that the receipts and payments by the Duke of Cambridge, and the defendant respectively, on account of the plaintiff and the management of his property, constitute a mutual account containing many items, as well on the debit as on the credit side thereof, and that such account is still open and running, and is of an intricate and complex nature, and can only be taken in a Court of Equity.

There are also charges relating to the administrators and managers, who were appointed by the Duke of Cambridge, and are alleged to have accounted to the defendant—and a very long statement of certain proceedings in France, in which it is alleged that the Duke of Cambridge attached, but failed in an attempt to establish, a claim to the plaintiff's property in that country—a specification of certain property alleged to have been seized by the Duke of Cambridge and the defendant respectively; and the statement of a transaction alleged to have taken place at Osterode in November or December 1830.

The plaintiff having in an earlier part of the Bill, stated,—That from a time previous to the Duke of Cambridge resigning the appointment of guardian, until within a few weeks past, the defendant had been residing in Hanover, out of the jurisdiction of this Court; and having charged, that he the plaintiff was resident and domiciled in England, and that the plaintiff and defendant, were respectively subjects of the Crown of Great Britain and Ireland, concludes the charging part of his

Bill by charging, that the defendant is a Peer of this Realm, and that his title as such, is his Royal Highness Ernest Augustus, Duke of Cumberland and Teviotdale in Great Britain, and Earl of Armagh in Ireland. And that since his arrival in this country, and during his residence here, he had exercised, and then exercised, his rights and privileges as such Peer as aforesaid.

It has been stated to me as a fact on both sides,—That the plaintiff availed himself of a temporary residence of the defendant in this country, to serve him here with the process of this Court, and that the defendant, before he appeared to the Bill, and consequently before the demurrer was filed, applied to the Lord Chancellor, to be relieved from the process; that the Lord Chancellor refused the application, and that thereupon the defendant appeared to the Bill in the usual manner; and upon this state of things, the plaintiff has founded an argument, which if valid, would make it unnecessary for me to consider the principal question upon the demurrer. The plaintiff has contended—1st. That the appearance of the defendant to the process ought to be deemed a waiver of any claim to personal exemption, from liability to be sued; and—2nd. That the refusal of the Lord Chancellor to relieve the defendant from the process, ought to be considered by me as a decision of the Lord Chancellor, that the defendant is subject to the jurisdiction of this Court, with reference to the subject-matter of this Bill. As to the first of these points, it would be singular, if appearance, which is the first step towards making a defence, should be deemed an abandonment or waiver of any defence

which the defendant may have. An appearance may be a waiver of any mere irregularity in the service of process, but I am of opinion that it is no waiver of such a defence as is now made, and which the defendant has clearly a right to submit to the consideration of the Court. He claims to be exempt from liability to be sued, but he nevertheless appears, in order that he may in a regular manner inform the Court, of the reasons upon which his claim is founded. As to the other point, it appeared to me very improbable, that the Lord Chancellor in refusing to stay the process upon a Bill, the contents of which were not regularly known to him, could have meant to decide that the defendant was, with reference to the contents of the Bill, liable to the jurisdiction of the Court. Upon this part of the case, I have, however, thought it right to communicate with the Lord Chancellor, who has informed me, that in declining to interfere with the process, he did nothing which could in any way prevent the defendant from making any defence which was open to him in the usual course of proceeding; and gave no opinion upon the question of jurisdiction in the particular case.

It is therefore incumbent on me to consider the defence made to this Bill, by the present demurrer.

In support of the demurrer for want of jurisdiction, the following are amongst the principal propositions advanced on behalf of the defendant.

1. He is admitted by the bill to be King of Hanover, a Sovereign Prince, recognized as such by the crown of England; as a Sovereign Prince his person is inviolable, and he is not liable to be sued in any court.

2. The inviolability of a Sovereign Prince is not confined to his own dominions, but attends him everywhere. Though a King be in a foreign kingdom, yet he is judged in law a King there. (7 Coke 15).*

3. His inviolability is not affected by his being temporarily resident in a foreign kingdom, of which he is a subject. The defendant is not the less a Sovereign Prince, and not the less exempt from being sued in any Court here, because he is a subject of the Queen, and a Peer of the Realm.

4. Even if the defendant should be held liable to be sued for some things in this country, he ought not to be held liable to be sued, in respect of the particular subject-matter of this suit, which is alleged to be matter of State, and not matter of forensic jurisdiction.

5. And finally, even if the defendant should be held to be liable to be sued here, and if the subject-matter of the suit should be held to be matter of forensic jurisdiction, yet that it is not matter subject to the jurisdiction of this Court; but is matter which must be deemed to be subject to the jurisdiction of some Court of special and peculiar jurisdiction, such as in this country, are matters arising in lunacy, bankruptcy, and various other matters which, although proper subjects of forensic jurisdiction, can only be adjudicated upon in Courts specially appointed for the purpose.

On the other hand, the following are amongst the principal propositions advanced in support of the Bill on behalf of the plaintiff.

* "Jurisconsulti melioris notæ, negant Principem extra ditionem suam merè privatum esse," &c.—Zouch, p. 63.

1. This ought to be considered as an ordinary suit between subject and subject. The plaintiff and the defendant are lineal descendants of the Princess Sophia, Electress and Duchess Dowager of Hanover, and as such, (4 Anne, c. 4), are to all intents and purposes, to be deemed natural born subjects of this Realm. The plaintiff is domiciled here,—the defendant was born here,—is an English Peer, and has taken the oath of allegiance. (1 Geo. I. st. 2. c. 13.)

2. No English subject can withdraw from his allegiance and subjection to the laws of the land. His becoming a Sovereign, a Sovereign Prince of another country can make no difference in this respect. He remains an English subject, and is bound to obey the laws of England.*

3. The law of England affords no authority for the proposition that Sovereign Princes resident here may not be sued in the Courts here, and there are dicta to the contrary, as in Calvin's case (7 Coke, 15), it is said that, "If a King of a foreign nation come into England by the leave of the King of this Realm, as it ought to be; in this case he shall sue and be sued in the name of King," and it is reported in the case of De la Torre *v.* Bernales, (1 Hov. Supp. Ves. 149), that Sir John Leach stated it to be his opinion, that foreign Sovereigns could both sue and be sued in this country. In support of this proposition, reference was made to proceedings† in which John Baliol, King of Scotland, was summoned

* Foster L. 60. 184; Bl. i. 370; Moor. 798.

† Ryley, Pl. part 1. 154, et seq.; Brady, iii. 18, et seq.; Tyrrell, iii. 62, et seq.; Carte, ii. 226. 231, 232; Tytler, i. c. 2.

to answer charges made against him in the Court of Edward I. King of England, and to proceedings in which Edward I., King of England, was summoned to answer charges made against him in the Court of Philip Le Bel, King of France, at Paris. But these cases have nothing to do with the question. They were respectively adopted in virtue of, and for the purpose of enforcing the feudal superiority which Edward I. claimed to have over the Kingdom of Scotland, and the superiority which the King of France had over the province of Guienne.

4. Liability to suit does not necessarily involve liability to coercion. The defendant, as an English Peer, is by privilege protected from personal coercion ; and even if a sovereign Prince without such peculiar privilege, were a defendant here, this Court has power so to modify its process as at the same time to do justice to the plaintiff and have due regard to the person and dignity of the defendant.

5. The Law of Nations — the general law — and the common interest of all mankind, is, that justice should be done all over the world. The right of a suitor here is not to be impeded by the assertion of an unrecognized privilege in any person against whom he has a legal demand.

6. The Queen of England is liable to be sued in a proper form — a form not applicable to a foreign sovereign; but if a foreign sovereign were not liable to be sued here, he would be placed in a better situation than our own Sovereign, which it is said would be absurd.

These propositions are all of them more or less important to be considered on the present occasion, and I have thought it convenient to enumerate them, although

I shall not have occasion to observe upon them all, in stating the grounds of the opinion which I have formed upon this demurrer.

The General proposition of the defendant is, that by reason of his character of a Sovereign Prince, he is exempt from the jurisdiction of any tribunal or court in this country.

His limited, or modified proposition, adapted to the specialities of the present case, is, that he is exempt from the jurisdiction of any tribunal in this country in respect of acts done in a foreign country, under foreign authority, and in no way connected with his own character of English Peer and English subject.

It has been fully established (K. of Spain *v.* Machado 4 Russ. 560, Hullett & Co. *v.* K. of Spain 2 Bligh N.S. 31. 1 Dow. & Cl. 169; and see R. d'Espagne *v.* Pountes, Rolls Abr. tit. Admiralty, E. 3; Rolls Report, 133; Blustr. 322; Hob. 78—113; Moore, 850; Barclay *v.* Russell, 3 Ves. 432; Dolder *v.* Lord Huntingfield, 11 Ves. 283) that a foreign Sovereign may sue in this country both at law and in equity; and further, that if he sues in a Court of Equity, he submits himself to the jurisdiction of the Court: a Cross Bill may be filed against him, and he must put in his answer thereto, not by any officer, agent, or substitute, but personally upon his own oath (King of Spain *v.* Hullett 1 Clark & Fin. 333; 7 Bligh, N.S. 359).

Lord Redesdale (2 Bl. N.S. 60) considered, that to refuse a foreign Sovereign the right of sueing in our Courts, might be a just cause of war; and the liability of a foreign Sovereign to be sued in a case where he himself

was suing here, was considered to be founded upon the principle that by sueing here he had submitted himself to the jurisdiction of the Court in which he sued. The decision is in accordance with the rules of the Civil Law. The *Reconventio* is a species of defence, and "Qui non cogitur in aliquo loco judicium pati, si ipse ibi agat, cogitur excipere actiones, et ad eundem judicem mitti." (Digest. v. i. l. 22. Corp. Jur. Civ. p. 131.)

In the case of Glyn *v.* Soares (1 Young. & Coll. 644) it was supposed that a person who was not a party to an action, but whose agent was on his behalf the plaintiff, might be made a defendant to a bill in Equity for discovery in aid of the defence to the action; and on that supposition it was held that the Queen of Portugal was properly made a defendant to the bill. Her demurrer, however, was allowed in the House of Lords (7 Clark & Fin. 466), where it was held that such a Bill of Discovery could only be sustained against parties to the action. If she had been plaintiff in the action I presume that she would have been held to be a proper defendant to the bill.

The case mentioned by Selden in his Table Talk (Law 3), was probably of the same sort. There were many suits pending between the King of Spain and English merchants. A merchant had recovered costs against him in a suit, and could not get them; and process of outlawry was taken out against him for not appearing; but the circumstances are not stated with such particularity as to make it practicable to draw any conclusion from them.

The cases which we have upon this point go no further than this, that where a foreign Sovereign files a bill or

prosecutes an action in this country, he may be made a defendant to a cross-bill or bill of discovery in the nature of a defence to the proceeding which the foreign Sovereign has himself adopted. There is no case to show that because he may be plaintiff in the Courts of this country for one matter, he may therefore be made a defendant in the Courts of this country for another and quite a distinct matter; and the question to be now determined is independent of the fact stated at the bar that the King of Hanover is, or was, himself plaintiff in a suit for an entirely distinct matter in this Court.

There have been cases in which this Court, being called upon to distribute a fund in which some foreign Sovereign or state may have had an interest, it has been thought expedient and proper, in order to a due distribution of the fund, to make such Sovereign or state a party. The effect has been, to make the suit perfect as to parties, but, as to the Sovereign or state, made a defendant in cases of that kind, the effect has not been to compel, or attempt to compel such Sovereign or state to come in and submit to judgment in the ordinary course, but to give the Sovereign an opportunity to come in to claim his right or establish his interest in the subject-matter of the suit. Coming in to make his claim, he would by doing so submit himself to the jurisdiction of the Court in that matter; refusing to come in, he might perhaps be precluded from establishing any claim to the same interest in another form.

So where a defendant in this country is called upon to account for some matter in respect of which he has acted

as agent for a foreign Sovereign, the suit would not be perfect as to parties, unless the foreign Sovereign were formally a defendant; and by making him a party, an opportunity is afforded him of defending himself, instead of leaving the defence to his agent, and he may come in if he pleases. In such a case, if he refuses to come in, he may perhaps be held bound by the decision against his agent.

There may be other cases in which Sovereign Princes, for the sake of having a claim or right determined, may have been afforded an opportunity of appearing, and may have voluntarily appeared as defendants before the tribunals of this country; but, save in the case of a cross bill, or bill of discovery, in aid of a defence, and in the case of a Sovereign Prince voluntarily coming in to make or resist a claim, it does not appear how he can be effectually cited, or what control the Court can have over him or his rights; and no case has been produced in which it has been determined that a foreign Sovereign, not himself a plaintiff or claimant, and insisting upon his alleged right to be exempt from the jurisdiction of the ordinary Courts, has been held bound to submit to it.

On the other hand, no case has been produced in which, upon the question properly raised, it has been held that a Sovereign Prince resident within the dominions of another Prince, is exempt from the jurisdiction of the country in which he is. In the case of Glyn *v.* Soares, the question was not mooted at the bar; but Lord Abinger took it into consideration, and (1 Y. & Coll. 698) distinctly expressed his opinion that, as a

general proposition, a Soveign Prince could not be made amenable to any court of judicature in this country; and upon this occasion the defendant insists upon it as a general rule, that, in times of peace at least, a Sovereign Prince is, by the law of nations, inviolable; that obvious inconveniences and the greatest danger of war would arise from any attempt to compel obedience to any process or order of any Court, by any proceeding against either the person or the property of a Sovereign Prince; and indeed that any such attempt would be deemed a hostile aggression, not only against the Sovereign Prince himself, but also against the state, and people, of which he is the Sovereign; that it is the policy of the law (to be everywhere taken notice of) that such risks ought to be avoided: and that this view of the subject ought of itself to induce the Court to allow this demurrer.

If a foreign Sovereign could be made personally amenable to the Courts of a country in which he happened to reside, he must be subject to the ordinary process of the Court, and if not protected by any privilege legally established by the law of England, he would in this country be subject to the execution of writs of attachment, and *ne exeat regno*, and other processes upon which he might be arrested. And upon this the counsel of the defendant cited the opinion of Vattel, who considered it to be a ridiculous notion, and an absurdity, to think that a Sovereign who enters a foreign country, even without permission, might be arrested there (Vattel, iv. 7 §, 108, p. 486).

It was attempted to meet the force of this argument

by alleging, that this Court had authority to modify the means of executing its process, and compelling obedience to its orders, so as to suit the rank or dignity of particular defendants; but this allegation was not supported by any authority, or by reference to any known law, or practice of the Court. In the case of the King of Spain it was stated (7 Bligh, N.S. 392) that his right "in respect of privilege was not greater than that of any of his subjects;" and the Lord Chancellor said, "The King of Spain sues here by his title of Sovereign, and so he must be sued, if at all; but beyond the mere name of Sovereign it has no effect. He brings with him no privileges which exempt him from the common fare of other suitors." I am of opinion that the only exemptions from the ordinary effects of the process of this Court are privileges which have a recognized legal origin; and that no other can be allowed.

To show that a Sovereign Prince carries his prerogatives with him into the dominion of other Princes, reference was made to the case of Ingelram de Nogent stated in Flecta (Lib. ii. c. 3, § 9, page 68, and cited in Calvin's Case, 7 Co. 15 b, and also in Moore, 798). This man was an attendant upon Edward I. King of England when in France. He committed a theft there, and was apprehended for it by the French; but the King of England required to have him redelivered, being his subject, and of his train, and after discussion in the Parliament of Paris, he was sent to the King of England to do his own justice upon him. Whereupon he was tried before the Steward and Marshall of the King of England's House, and executed in France. At

a more recent period Monaldeschi, an attendant upon Christina, the abdicated Queen of Sweden, was by her orders put to death within her residence in France (Le Bel. Relation de la Mort du Marq. de Monaldeschi, &c., Arch. Cur. 2e. Sere. viii. 287), a fact in itself atrocious, but which was not seriously resented by France, and is said to have been afterwards defended by great authority.* Bynkershock speaks of it thus, "Quod factum Galli, quamvis indignabundi, impune transmiserunt, ex impotentiâ muliebri, dicet alter, alter vero, ex jure gentium, ut optimum maximumque est."—Bynk. Op. ii. 151.

But I own that with reference to the present case, I do not attach much importance to instances of this sort. The doctrine or fiction which has been expounded by some writers on the law of nations, under the name of extra-territoriality (Martens 46, Wheatley, i. 273), if it were carried out to its legitimate consequences would, as it appears to me, render it highly dangerous for the Sovereign of any country to admit within his dominions any foreign Sovereign or even any Ambassador of a foreign Sovereign. It is admitted that the extent to which the doctrine should be carried out, must be subject to great modifications, and I do not think that it affords any assistance in the practical consideration of the question, what are the exemptions or privileges which ought by the law of nations to be allowed to a foreign Sovereign temporarily resident within the dominions of another Prince.

Another argument for the defendant was, that a Sove-

* Leibnitz, Bibliograph. D'Alembert Memoires de Christine.

reign coming from his own dominions into this country attending the Court of the Queen, and sitting in Parliament, must be deemed to have come with the consent of the Queen, and to have been intitled to a safe conduct which would have contained a prohibition to sue him in any Court,* that, therefore, the defendant ought to be deemed to have come and resided here on the faith of such right, which he is not the less intitled to, because the letters of safe-conduct were not actually applied for and issued. This argument assumes that letters of safe-conduct, such as might and lawfully ought to be issued at this time, and on the occasion of such a visit as that made to this country by the King of Hanover, would have contained a prohibition to prosecute such a suit as this.

But the argument for the defendant, which appears to me to be the most important, was founded upon analogy to the immunities of Ambassadors, recognized and declared to be in accordance with the law of England, by the stat. 7 Anne, c. 12.

By that statute it was declared, That all writs and processes sued forth and prosecuted, whereby the person of any Ambassador of any foreign Prince, authorized and received as such by her Majesty, may be arrested or imprisoned, or his goods distrained, seized, or attached, shall be deemed to be utterly null and void : and after a penal clause affecting any person who may sue out any such

* "As no King, &c. can come into this realm without a licence or safe conduct, so no *pro-rex*, &c. which representeth a king's person can do it."—Co. Inst. iv. 155.

† Reg. Brev. 26.

writ or process, there is a proviso that no merchant or trader within the description of the Statute against Bankrupts, who puts himself into the service of any Ambassador, shall have or take any benefit by the Act.

It is argued that the law of nations and the law of the land having granted such immunities to Ambassadors, the mere envoys and agents of Sovereign Princes cannot have refused at least equal immunities to the Sovereigns themselves, on whose account the immunities to Ambassadors were given. If it be right, as it is universally admitted to be, that Ambassadors should have such immunities, it must, *à fortiori*, be right that Princes should have them ; and thus it is argued that because Ambassadors are held to be inviolable in the countries where they reside, Princes ought also to be so.

But on the part of the plaintiff this is denied—and it is said that we must look at the reason of the law. An Ambassador who comes into a foreign state on the business of his Sovereign, which cannot be transacted without entire freedom and independence on his part, must be allowed privileges which are in no way required for the protection or accommodation of a Prince who comes on a visit of pleasure or compliment ; and, moreover, that the immunity of an Ambassador does not extend to every suit of every kind. There are exceptions, depending on the peculiar liabilities or obligations of the person, or on the nature of the transaction, and it cannot be inferred that because an Ambassador is in some or in many cases exempt from suit, that there-

fore a Sovereign Prince is exempt from suit in all cases.

The question upon the demurrer is to be determined by that which may be thought to be the law of nations applicable to the case. There is no English law applicable to the present subject, unless it can be derived from the law of nations, which when ascertained is to be deemed part of the Common Law of England.

The law of nations includes all regulations which have been adopted by the common consent of nations in cases where such common consent is evidenced by usage or custom.

In cases where no usage or custom can be found, we are compelled, amidst doubts and difficulties of every kind, to decide in particular cases according to such light as may be afforded to us by natural reason or the dictates of that which is thought to be the policy of the law.

"Lege deficiente, recurritur ad consuetudinem, et deficiente consuetudine, recurritur ad rationem naturalem:" —and in the case now in question, it does not appear that there have been cases, or that events have occurred, from which any usage or custom of nations can be collected.

Bynkershock, in his treatise *De Foro Legatorum*, cap. 3 (Op. ii. 150), discusses the very question which is now under consideration. He supposes a Sovereign Prince to pass into the dominions of another Prince for any cause whatever of business or pleasure. It is not, he says, to be supposed that the Prince went there with the intent to put off his own sovereignty, and become the

subject of another ; yet what is to be done if he commits violence or contracts debts in the country where he is ? This, he says, will depend on the law of nations adopted from reason and mutual consent, and established by usage. If we consult reason, much is to be said on either side. If a Prince, in the dominions of another, becomes a robber, homicide, or conspirator, is he to escape with impunity ? If he extorts money, or becomes indebted, is he to be permitted to carry home his plunder ? It is, he says, difficult to admit that ; and yet, on the other hand, is that which reason and the consent of all nations have granted to Ambassadors, because they represent a Prince and obey his orders, to be refused to the Prince himself, perhaps transacting his own affairs ? Is the sanctity of the Prince less than that of his Ambassador ? Shall we compel the Prince himself to answer when his envoy is free ? The learned writer, after in vain searching for precedents, proceeds thus :—" Nihil—in hoc argumento proficies, rebus similiter a gentibus judicatis, atque ita sola superest ratio, quam consulamus. Et *hac* consulta, ego non ausim plus juris tribuere in Principem non subditum, quam in legatum non subditum. . . . Quare ut extremum est in legato, ut jubeatur imperio excedere, sic et in Principe statuerem si jus hospitii violet. . . . In causâ æris alieni idem dixerim, nam arresto detinere Principem ut æs alienum expungat, quamvis forte stricti juris ratio permitteret, non permitteret tamen analogia ejus juris quod de legatis ubique gentium receptum est. Si neges, ubi de jure gentium agitur, ex analogia disputari posse, ego negaverim, hanc quæstionem ex jure gentium expediri posse, cum exempla

deficiant, quibus consensus gentium probetur, nec quicquam adeo supersit quam ut ad legatorum exemplum, ipsos Reges et Principes et quidem magis, ab arresto dicamus immunes et in eo a cæteris privatis differre."

In a case where there is no precedent—no positive law—no evidence of the common consent of nations—no usage which can be relied on—where reasons important and plausible are arrayed in opposition to each other—and where no clear and decided preponderance is to be found, it seems reasonable to endeavour to borrow for our guidance such light, however feeble and uncertain, as may be afforded by analogous cases, from whence have been derived rules adopted with great, though not perfect uniformity, by all nations.

It is true that a decision, derived from principles supported by analogous cases alone, cannot be entirely satisfactory, and yet it may be the best, the most satisfactory which the nature of the case admits of.

It will be more satisfactory in proportion to the clearness of the analogy between the cases under consideration.

It must be admitted that all the reasons assigned for the immunity of Ambassadors are not applicable to the case of Sovereign Princes, and it has been truly observed that an Ambassador, if exempt from the coercive power of the law in the country where he is, may, nevertheless, be compelled to submit to justice by his Prince in his own country;* but that if you exonerate the Prince himself, Justice fails altogether: but in ultimate effect, the cases come very nearly to the same result. The

* Ward, ii. 515. 596, 8.

Prince, not being subject to a foreign power, may refuse to compel his Ambassador to do justice, or may refuse to do the justice declared by a foreign tribunal, when requested by a foreign power: and the refusal in either case becomes a ground of imputation against the Prince who refuses, and may give rise to those irritations which are so apt to prove incentives to war. Investigate the subject as we may, considerations of this sort press upon us. Whilst a prevailing respect for humanity and justice resides in the breasts of Princes, and when there is consent as to the means of ascertaining and promoting the ends of justice in particular cases, it is well: but in the last result of any inquiry on the subject, we find that in the absence of moral sanctions, and of treaty, war and reprisal (*id est*, war again in a particular form), are the sanctions of that which is called the law of nations.

If we hold Sovereign Princes to be amenable to the Courts of this country, the orders and decrees which may be made cannot be executed by the ordinary means. Where is the power which can force obedience? If accidental circumstances should give the power, and if, for the supposed purposes of Justice, an attempt were made to compel the obedience of a Sovereign Prince to any process, order, or judgment, he and the nation of which he is the head, and probably all other Princes and the nations of which they are the heads, would see in the attempt nothing but hostile aggression upon the inviolability which all claim as the requisite of their sovereign and national independence. On the other hand, if the jurisdiction of the Courts against Sovereign Princes be excluded we are on the institution of a claim, very nearly,

though not quite, in the state to which we are brought by the process, order, or judgment, on the former supposition. The state may have to seek redress for the injured subject: and justice is to be requested from a Prince or Chief, against whom you have no ordinary means of enforcing it. It may be refused; acquiescence in the refusal is the abandonment of justice—and pressure after refusal implies an imputation, and gives rise to discussions and irritations which may again prove incentives to war. Justice can be peacefully and effectually administered there,—only where there is recognized authority and adequate power. What is to be done in cases where there is no power to enforce it?

It must be admitted that the subject is replete with difficulties. These difficulties and the importance of maintaining the legal inviolability of Sovereign Princes, can scarcely be shown more strongly than by adverting to the opinions which have been expressed by eminent Jurists, that offences committed by Sovereign Princes in foreign states, ought rather to be treated as causes of war than as violations of the law of the country where they are committed; and ought rather to be checked by vengeance, and making war on the offender, than by any attempt to obtain justice through lawful means.

Zouch (Solutio Questionis, etc., cap. IV., p. 66,) says, "Ad id quod asseritur, malè cum principibus actum iri, si in eorum territoriis, aliis Principibus in eorum pernitiem, conjurandi licentia sit permittenda; respondetur quod talis licentia neutiquam est permittenda. Sed *eos bello prosequi* juri gentium consentaneum est. Et si cum in territorio Principis in quem conjurarent depre-

hensi sunt, *præsenti vindictâ uti*, melius videbitur; juri gentium convenit diffidere et pro hostibus declarare, unde non expectato judicio cuivis *eos interficere* impune liceat:" and Bynkershock (Op. ii. 151) says, "Quid si enim, more latronis in vitam, in bona, in pudicitiam cujusque irruat, nec secus atque hostis captâ grassetur in urbe. Poterit utique detineri, forte et occludi, quamvis *per turbam malim* quam constituto judicio."

When great and eminent lawyers, men of experience and reflection, so express themselves as to show their opinion, that less mischief would ensue from the unrestrained and irregular vengeance of individuals, and of the multitude, than from attempts to bring Sovereign Princes to judgment in the ordinary Courts of a foreign country where they have offended; however much we may lament that such should be the condition of the world, we may be sure of the sense which they entertained of the difficulty of making, and of the danger of attempting to make, Sovereign Princes amenable to the Courts of Justice of the country in which they happen to be.

After giving to the subject the best consideration in my power, it appearing to me, that all the reasons upon which the immunities of Ambassadors are founded, do not apply to the case of Sovereigns; but that there are reasons for the immunities of Sovereign Princes, at least as strong if not much stronger than any which have been advanced for the immunities of Ambassadors; — that suits against Sovereign Princes of foreign countries must in all ordinary cases in which orders or declarations of right may be made, and in requests for justice, which

might be made without any suit at all;—that even the failure of justice in some particular cases would be less prejudicial than attempts to obtain it by violating immunities thought necessary to the independence of Princes and Nations. I think that, on the whole, it ought to be considered as a general rule in accordance with the Law of Nations, that a Sovereign Prince, resident in the dominions of another, is exempt from the jurisdiction of the Courts there.

It is true, as was argued for the plaintiff, that the common interest of mankind requires that justice should everywhere be done; and that for the attainment of justice, all persons should be amenable to the Courts of Justice in the country where they are. Such is the general rule—but in cases where either party has no superior, by whom obedience can be compelled, where the execution of justice is not provided for by Treaty, and cannot be enforced by the authority of the Judge—and where an attempt to enforce it by the authority of the State may probably become a cause of war, the same common interest, which is the foundation of the rule, requires that some exception should be made to it; and that exception is the general rule with respect to Sovereign Princes.

The question then arises, whether the exception in favour of Sovereign Princes, and the exemption from suit thereby allowed, is to be entire and universal, or subject to any and what limitations?

The Act of Parliament relating to Ambassadors professes to be, and has (1. Barnw. and Cr. 562,) frequently been adjudged to be, declaratory, and in confirmation of

the Common Law; and, as Lord Tenterden said, "It must be construed according to the Common Law, of which the Law of Nations must be deemed a part."

The Statute does not, in words, apply to the case in which the Ambassador might be a subject of the Crown of England. But there is an exception to the exemption in the case of bankrupts in the service of Ambassadors —and cases have frequently occurred in which an Ambassador has himself been a subject of the Sovereign to whom he was accredited;—and notwithstanding some differences of opinion on the subject, it seems to be considered that such an Ambassador would not enjoy a perfect immunity from legal process, but would have an immunity extending only to such things as are connected with his office and ministry, and not to transactions and matters wholly distinct and independent of his office and its duties. Bynkershock (Op. ii. 162) thus expresses his opinion:—"Legatum scilicet manere subditum, ubi ante legationem fuit; atque adeo si contraxit, aut deliquit, subesse imperio cujus antea suberat. His autem consequens est, nostros subditos quamvis alterius Principis legationem accipiant subditos nostros esse non desinere, neque forum quo semper usi sunt jure subterfugere." And Vattel (B. IV. c. 8, sect. 112) says, "It may happen that the Minister of a foreign power is the subject of the State in which he is employed, and in this case he is unquestionably under the jurisdiction of the country in everything which does not directly relate to his ministry:" and after some discussion upon the question how we are to determine in what cases the two characters of subject and foreign ministers are united in the same person,

Vattel adds, "Whatever inconveniences may attend the subjection of a Minister to the Sovereign with whom he may reside, if the Foreign Prince chooses to acquiesce in such a state of things, and is content to have a Minister on that footing, it is his own concern."

And presuming from this view of what is considered to be the Law of Nations, that with respect to the immunity of an Ambassador who is a subject in the country of his residence, it must be distinguished what acts of his were connected with or required for the discharge of the duties of his ministry and what were not; and that with regard to acts connected with his ministry, the Courts (considering his character of Ambassador) would hold him to be exempt from suit, but that with regard to acts not connected with his ministry, the Courts (considering his character of subject) would hold him liable to suit, the inquiry is, whether in like manner a Sovereign Prince, resident in the dominions of another Prince, whose subject he is, may not justly and reasonably be held free from suit in all matters connected with the Sovereignty, and his rights, duties, and acts as Sovereign, and yet be held liable to suit in respect to all matters unconnected with his Sovereignty, and arising wholly in the country to the Sovereign of which he is a subject.

The first and most general rule is, that all persons should be amenable to Courts of Justice, and should be liable to be sued. A consideration of the policy of the law, creates an exception in the case of Sovereign Princes. May not a further consideration of the policy of the law create a modification or limitation of the exception, in the case of Sovereign Princes who are subjects?

There are in Europe other Sovereign Princes,* who, if not now, have been subjects of the country of their origin or adoption. Upon such a question as this I cannot disregard those cases; but they may have their specialities, of which I am not aware.

I cannot venture to say that a subject acquiring the character of a Sovereign Prince in another country, and being recognized as a Sovereign Prince by the Sovereign of the country of his origin, may not, by the act of recognition, in ordinary circumstances, and by the laws of some countries, be altogether released from the allegiance and legal subjection which he previously owed; but the case now before me must depend on its own circumstances; and I am of opinion that it is not contrary to any principle, and not unreasonable, to consider that, in the contemplation of the Courts of this country, the inviolability which belongs to his Majesty the King of Hanover as a Sovereign Prince, ought to be, and is modified by his character and duties as a subject of the Queen of England.

Previously to his becoming King of Hanover, he always lived in allegiance to the Crown of England, and in subjection to the laws of England. His accession to the throne was cotemporaneous with the accession of the Queen to the throne of this kingdom; and since he became King of Hanover, he has been so far from renouncing, or from showing any desire to renounce, his allegiance to the Crown or his subjection to the laws of England—he has been so far from admitting it to be questionable, whether his Sovereignty and the recogni-

* Bernadotte, Leopold, Otho.

tion of it by the Queen has absolved his allegiance or his subjection to the laws of England, that he has renewed his oath of allegiance, and taken his seat in the English Legislature, and has claimed and exercised the political rights of an English subject and an English Peer.

If he came here as King of Hanover only, the same inviolability and privileges which are deemed to belong to all Sovereign Princes would have been his, and, save in the peculiar cases, such as I have before referred to, he would have been exempt from all suits and legal process. But coming here, not as King of Hanover only, but as a subject, as a Peer of the realm, and as a member of the Privy Council, can it be reasonably said that he is exempt from all jurisdiction, or, in other words, from all responsibility for his conduct in any of those characters?

The law of England admits the legal inviolability of the Sovereign, requiring, at the same time, the legal responsibility of those who advise the Sovereign. Can the law of England, in any individual case, admit the strange anomaly of an inviolable adviser of an inviolable Sovereign? of a legal subjection, without any legal superiority? Can any Peer or Privy Councillor, whatever station he may occupy elsewhere, be permitted to give advice for which any other Peer, or any other member of the Privy Council might be justly impeached, and yet hold himself exempt from the jurisdiction of the highest tribunal in the realm? May he enter into a contract which any other subject would be compelled to perform, and yet refuse to answer any claim whatever, either for specific performance or for damage?

Great inconveniences may arise from the exercise of any jurisdiction in such a case. They arise, perhaps, inevitably from the two characters which his Majesty the King of Hanover unites in the same person; and from the claim which he voluntarily makes to enjoy or exercise concurrently in this country his rights as a Sovereign Prince, and also his rights as an English subject, Peer, and Privy Councillor. He is a Sovereign Prince, and as such inviolable in his own dominions, and I presume, also, in the dominions of every other Prince to whom he is not a subject. Remaining in his own dominions, or in the dominions of any other Prince to whom he is not a subject, he would, as I presume, be exempt from all forensic jurisdiction; but he comes to this country, where he is a subject, and claims and exercises his rights as such. As a subject, he owes duties correlative to which, not individuals only, but the country at large, may have legal rights which are to be respected, and, being legal rights against a subject, in respect of his acts and duties as a subject, it seems that they ought, if necessary and practicable, to be vindicated and enforced by the law. Those legal rights would be nugatory, if his inviolability as a Sovereign Prince would admit of no exception or modification. But any contradiction or inconsistency may be obviated by distinguishing, as in the analogous case of the Ambassador, the acts which ought to be attributed to one character or the other; and it appears to me, that when necessary it must be the office and duty of the Courts to make the distinction.

If the distinction can justly be made, why should it not? and why should not the jurisdiction be ex-

ercised so far as the circumstances of the case will allow?

Admitting it to be the general rule, that Sovereign Princes are not liable to be sued, and that all Sovereign Princes may consider themselves interested to maintain the inviolability which each one claims, and that any aggression upon it might, in ordinary circumstances, be a cause of war, yet, observing what is stated to be the law of nations in the case of Ambassadors, conceiving that a rule applicable only to the case of Sovereigns who are subjects, and think fit actively to exercise their rights as subjects, cannot have any extensive application, and is not likely to excite any general interest, or any alarm, and having regard to that which is absolutely required to maintain the relation of Sovereign and subject in any country, I am of opinion that no complaint can justly, or will probably arise, from any legal proceeding, the object of which is to compel, as far as practically may be, a Sovereign Prince residing in the territory of another Prince, whose subject he is, to perform the duties of a subject in relation to his own acts done in the character of subject only.

And admitting that in ordinary cases, it may happen that the execution of a decree cannot be enforced against a Sovereign Prince, though a subject of this realm, I do not think that for that reason a plaintiff should be deprived of all means of establishing his right in a due course of procedure. I do not think that I ought to presume that a Sovereign Prince, who deems it to be consistent with his dignity and interest, to come here and practically exercise the rights of an English subject, will

not also deem it consistent with his dignity and interest, to yield willing obedience to the law of England when duly declared.

And for these reasons I am of opinion, that his Majesty the King of Hanover is, and ought to be exempt from all liability of being sued in the Courts of this country, for any acts done by him as King of Hanover, or in his character of Sovereign Prince; but that being a subject of the Queen, he is and ought to be liable to be sued in the Courts of this country, in respect of any acts and transactions done by him, or in which he may have been engaged as such subject.

And in respect of any act done out of this realm, or any act as to which it may be doubtful whether it ought to be attributed to the character of Sovereign, or to the character of subject, it appears to me, that it ought to be presumed to be attributable rather to the character of Sovereign, than to the character of subject.

And it further appears to me, that in a suit in this Court against a Sovereign Prince, who is also a subject, the Bill ought upon the face of it to show that the subject-matter of it constitutes a case in which a Sovereign Prince is liable to be sued as a subject.

I cannot, therefore, consider the present suit as an ordinary suit between subject and subject; it is a suit against a defendant who is *primâ facie* entitled to special immunities, and it ought to appear on the Bill that the case made by it, is a case to which the special immunities ought not to be extended.

What is shown is, that the defendant is an English

subject, and may, therefore, not be exempt from suit in some cases. Is it shown that this is one of the cases in which the defendant is liable to be sued?

The object of the suit is to obtain an account of property belonging to the plaintiff, alleged to have been possessed by the defendant under colour of an instrument creating a species of guardianship unknown to the law of England. It is not pretended that any one act was done, or that any one receipt, in respect of which the account is asked, was made in this country. Every act alleged as a ground of complaint was done abroad in Brunswick, in Hanover, or elsewhere in foreign countries. No act alleged as a ground of complaint was done by the defendant before he became King of Hanover; and from the nature of the transaction, and the recitals in the instrument, there are strong grounds to presume, that it was only by reason of his being King of Hanover, that the defendant was appointed guardian of the plaintiff's fortune and property. It is not pretended that the instrument has been impeached, or attempted to be impeached, in the country where alone it has its locality and operation, although it is alleged to be illegal there, and no reason is given why the plaintiff has not availed himself of that illegality to obtain relief from it.

It is alleged to be null and void here, and upon this I may observe, that although with regard to English instruments intended to operate according to English law, the Court knowing the nature of the instrument, the relation between the parties to it, and the law applicable to the case, may be able, even on demurrer, in a simple case to adjudicate thereon, upon a mere allegation that the in-

strument is null and void, yet that with regard to a foreign instrument, intended to operate according to a law not known in England, and which, as foreign law, is to be proved as a fact in the cause, an allegation that the instrument is void is too vague. But passing that over, and considering the other matters which I have mentioned, and observing that, notwithstanding the allegation at the bar, that the instrument complained of is wholly independent of any political or state transaction, it is in the Bill stated as the sequel to a political revolution, which resulted in the deposition of a Sovereign Prince, and the appointment of a successor made under the authority of a Decree of the Germanic Diet, by the late King of Hanover and the reigning Duke of Brunswick: considering also that the instrument stated as the sequel of these political proceedings (which I must consider to be either wholly immaterial, or as introduced into the Bill for the purpose of showing the character of the transaction in question), is stated to have been executed by the late King of Hanover and the reigning Duke of Brunswick; and considering further, the objects for which the instrument is purported to have been executed. Connecting those objects with the political transactions stated in the Bill, and the transactions alleged to have taken place at Osterode in 1830, I should, if it were necessary for me to decide the question, be disposed to think that the instrument complained of is connected with political and state transactions, and is itself what, in common parlance, is said to be a state document, and evidence of an Act of State.

But upon this occasion it is not necessary for me to

give any opinion upon the question, Whether the act complained of is or is not an act of state, or upon the question, which seems to have been raised in France, Whether the Courts of a foreign country ought to take notice of such an instrument, for the purpose of enabling the guardian, under its authority, to possess the property and effects of the plaintiff in such foreign country? It is not even necessary for me to decide the question, Whether, as against a subject only, this Court would have any jurisdiction to give relief in respect of acts done abroad, under such a foreign instrument as this.

The question which I have had to consider is, Whether, under the circumstances of this case, and against a Sovereign Prince who is a subject of the Queen, this Court has the jurisdiction which is attributed to it by the Bill?

And I am of opinion, that the alleged acts and transactions of the defendant, under colour or under the authority of the instrument in question, are not acts and transactions in respect to which the defendant is liable to be sued in this Court, or in respect of which this Court has any jurisdiction over him.

Let this demurrer therefore be allowed.

Lord Langdale's Judgment in the Suit of Whicker *v.* Hume.

14th January, 1851.

In this case, it was (11th of January, 1843) referred to the Master to inquire where John Borthwick Gil-

christ was domiciled at the time of his death (8th of January, 1841).

The Master reported, that he was then domiciled in England, and the case comes before me on exceptions to the Master's report, which have been filed by the plaintiff (one of the testator's next of kin), who alleges that the testator at the time of his death, was domiciled in Scotland, or if not in Scotland, in France.

The question is one, which under ordinary circumstances is proper to be decided upon the trial of an issue, and I should have adopted that course on this occasion, if all parties had not concurred in requesting me to determine the exceptions here upon the evidence which was taken before the Master.

The evidence adduced is extremely voluminous. There are several affidavits and an extremely long correspondence, consisting principally of letters written by the testator himself, and containing statements of his acts and intentions—many of these statements are of an ambiguous nature—and very few, if any of them, of a character to be entirely satisfactory and conclusive.

The testator was born in Edinburgh of Scotch parents, domiciled in Scotland in the month of June 1759; he was educated there, and apprenticed to a surgeon at Falkirk; he was in his early youth in the West Indies for two or three years, but in 1782 he went from Scotland to the East Indies, and entered into the service of the East India Company there. He remained in the East Indies till the year 1804; and during his stay there, was appointed, at first Assistant-Surgeon (6th of May,

1789), and afterwards (20th of April, 1798), surgeon in the service of the Company. It appears that he had paid much attention to the study of Oriental languages; he was (24th of December, 1798) appointed Professor of the Hindostanee and Persian languages, in the College of Fort William, and he had spent much time in the preparation of literary works on the subject.

In 1804 his health had become impaired, he resigned his Professorship, and obtained leave to return to England.

The testator was then about forty-five years of age, and it does not clearly appear what plan he had formed for the settlement or employment of his future life—he was looking to both Edinburgh and London—to Scotland and to England.

In Edinburgh, and in the year 1804, he presented to George Heriot's Hospital 100*l.*, as a small testimony of gratitude for his education there; he procured himself to be admitted a burgess and guildbrother of the city, and caused his armorial bearings to be matriculated in the Lyon office, and obtained a diploma of the Academy of James VI., of the City of Edinburgh, and in the year 1805, it is said that he embarked in the wholesale linen trade in Edinburgh.

He seems, however, for some time, to have principally resided in the neighbourhood of London. On the 28th of May, 1805, he obtained a pension from the East India Company, as a surgeon retired. He endeavoured to promote the sale of the works on Oriental languages which he had prepared, by giving lectures on the subject. And on the 21st of February, 1806, he was appointed

professor of Oriental languages in the college of the East India Company, at Haleybury, which, however, he held only for a few months. In the meantime, he claimed to be connected with the noble Scotch family of Borthwick; conceived that he had some right to the title then supposed to be only in abeyance, obtained (20th of March, 1806), a royal licence to take and use the name of Borthwick, and (5th of June, 1806) obtained a grant of arms, in which he was described as John Borthwick Gilchrist, of Camberwell.

He continued for some time to give lectures (which are called gratuitous) on Oriental languages with a view to promote the sale of his literary works; but about the year 1806 he seems to have resolved to settle in Edinburgh. He became (23rd of December, 1806) a member of the Company of Merchants in that city, and entered into partnership as a banker with James Inglis, although the formal instruments were not executed till a later date (1808 and December 26). Yet the commencement of the partnership business was to date from the 1st of January, 1807. The partnership property consisted of a heritable flat in Hunter Square where the business was carried on, and 20,000*l.* stock or 200 shares of 100*l.* each, in the Commercial Bank of Scotland. With reference to the time when his engagement to the East India Company may be strictly said to have ceased, it may not be quite clear at what particular time the testator ought, in strictness, to be said to have been domiciled in Scotland, but the proof appears to me to be clear and satisfactory that Edinburgh was his domicile, with all the legal incidents of domicile,

some years before the year 1817. He was then, and it is justly and necessarily admitted that he was then domiciled at Edinburgh, which was, or had been, his domicile of origin, the place of his birth and education to which he was naturally attached by all the strong ties by which all men (and Scotchmen perhaps more than others) are bound. He had early paid certain debts left unpaid by his father and mother, and had prevailed on his mother to return from Newfoundland and join him in Edinburgh. He purchased (3rd of April, 1807) a house at No. 6, Nicholson Square, and resided there with his wife (whom he married in May, 1808) ; and besides the interest he had in his business as a banker, he attended to the printing, publication, and sale of his literary works, and became a member of the Royal Society of Edinburgh, the Horticultural Society, the East India Club, and the Scottish Military and Naval Academy. Everything indicated that he was settled, and such appears to me to have clearly been his intention.

But in the year 1815 the banking firm of Inglis, Borthwick, Gilchrist, & Co. fell into difficulties ; the testator could not support the expenses to which he had been accustomed. The partnership was dissolved. The testator retired as from the 30th of June, 1815. In the year 1816 he went to reside at Inchyra House in Perthshire, and after returning for a time to Edinburgh he went to London in June, 1817.

It appears to me, from the evidence, that he left Edinburgh with the intention to abandon it as his place of permanent residence, and that he arrived in London with

no certain or settled determination what to do or how to employ himself.

He had affairs at Edinburgh which could not be immediately settled; his property there consisted in part of his moiety of the flat in Hunter Square, where the banking business had been carried on, and of his share in the Commercial Bank Stock. He was indebted to the Commercial Bank in a considerable sum of money, and there were, I think, some partnership concerns not entirely arranged. His house in Nicholson Square was on hand and could not be easily sold, or even let; he had a stock of books in the hands of agents to sell; and other books used as his library. And moreover he had a family of natural children who appear to have been extremely troublesome to him, and to have occupied much of his attention. When he left Edinburgh he omitted to relieve himself from the liabilities to which he was liable in consequence of his being a member of various societies there. These several matters are frequently mentioned in his correspondence which can only be understood with reference to them and to his peculiar character.

He was a man in the utmost degree self-confident, measuring the abilities, and even honesty, of other persons by their more or less accordance with his own views. He had no confidence whatever in the stability of the Government and institutions of the country, but had very great confidence in every scheme of his own suggestion, believing that his own abilities and honest purposes, ought to insure success to every adventure in which he engaged; he very readily engaged in new speculations,

but he as readily abandoned them, if he found that he could not control them. There is necessarily much uncertainty in the conclusions which ought to be deduced from the declarations of such a person on particular occasions. He was irritable and rash, and, like all such persons, no doubt often uttered expressions which could not be considered as satisfactory proofs of settled intention.

He very naturally desired to turn his knowledge and abilities to profitable use. He mainly relied on his mode of teaching oriental languages. He thought it peculiarly his own, and expected to derive from it both honour and profit. To these views he seems to have been more constant than to any other; to them, as far as he could, he made all other views subservient. His plans upon the subject commenced in India before 1802; were pursued in London, whilst he remained in the neighbourhood of London, before he went to reside in Scotland; were pursued in Scotland during his residence there; and were, probably, the principal, if not the only subject of his consideration when he arrived in London in 1817.

He desired the assistance and influence of the East India Company, and submitted, though it would seem with reluctance, to seek for their patronage and support; his character, in some opposition or even conflict with his position and interest, gave rise, in process of time, to some inconsistencies and some uncertainty. While he thought it useful, or perhaps necessary, for his purpose, he wished to receive assistance or favour; but he could not refrain from seeking to establish a claim adversely;

his petitions to the East India Company were accompanied, or soon followed, by attacks very likely to produce unfavourable effects; he seems to have truly described himself as irritable and irritated; and his correspondence abounds in indications of his condition in that respect.

Such being the man, he resided in London from the middle of 1817 till 1827 or 1828, mostly in lodgings, but for a time in a house which he hired furnished. I consider it to be immaterial whether he resided in a house of his own or in lodgings; in fact, he resided in London, with such occasional exceptions or absences as were consistent with London being his usual and common place of residence; we have the undoubted fact of residence; and if we can see from the evidence, that this fact, during its continuance, was accompanied by an intention to make London his permanent place of residence, and the central place of his affairs and business, then it must, I think, be considered that London became his domicile, with the legal incidents of domicile.

His attention was first directed to the East India Company. He succeeded in obtaining some, though not a satisfactory, increase of pension—and he hoped to increase the sale of his books by obtaining authority to give lectures with the sanction of the Company; his applications were continued for what he thought a very long time, and were not so successful as he hoped; and in June, 1818, he informed Mr. M'Hutchin that he had been worried night and day concerning his business with the Court of Directors for six months past—he feared to little purpose; still he could not quite despair, and

should keep at them a little longer. He persevered, and he occupied himself in preparing to give lectures; and to some extent his perseverance was rewarded with success; and, on the 4th of November, 1818, he was informed that, with the view of encouraging him to establish lectures of the description he had proposed, and entertaining the highest opinion of his merits and qualifications for the objects in question, the Court of Directors had resolved to allow him the sum of 200*l.* per annum for three years, at the expiration of which period, it would appear how far the advantages which he anticipated were likely to be realized; and the Court further resolved that all persons appointed to the Company's Medical Service, should be required to attend one course of his lectures, for admission to which they should not pay more than three guineas. This appointment was temporary; but by its assistance the testator was enabled greatly to increase the sale of his books, and I think, that from that time, he and his wife considered themselves to be fixed in London, and he looked forward to paying a short visit to Edinburgh to wind up his affairs there; he did not consider the professorship, as he called it, profitable in itself, but rather as a losing concern, except as it increased the sale of his books, which was his main object and reliance. He had early begun to think that he liked London better than Edinburgh, and his dislike to Edinburgh seemed to increase. He desired the stock of salable works, with an exception, and his whole library, such as it was, to be sent from Edinburgh to London, and he effected some reduction of the debt which he owed to the Commercial Bank. He seems to

have considered himself bound to London by official duties, as he called them. The sale of his literary works was, I think, his principal business, but it was not very long before he hoped to improve his income or acquire distinction and importance by some additional employment; and in the different projects which he formed during his residence in London, it is plain that one principal circumstance upon which they were all founded was his own residence in London. Whatever he proposed to do in the various occupations which he at different times contemplated, his contemplated place of action was London. It was there that he was to be either entirely or principally. At various times he proposed to become a director of the European Insurance Company, to acquire some influence or interest in the Brecon Insurance Company, to take an active part in managing the business of a proposed Herring Fishery—of a Joint Stock Bank of England and Scotland—to become gratuitously a director or agent of the Scotch Military Academy—to become director and honorary corresponding secretary of the southern Edinburgh School, and of the Exeter Public School Committee in London.

In these, and other projects, which may have occurred to his versatile and active mind, London was contemplated as the place where he was to be and to act; and in considering the whole correspondence, while one is surprised at the rapid succession and abandonment of different schemes for obtaining profit or distinction, importance or notoriety, there seems to be a steady and consistent contemplation of London as the place where his exertions were to be mainly, if not exclusively, exer-

cised. This might have been consistent with an intention to return to Scotland, or to reserve another home or final resting-place after he should have satisfied his immediate purposes: but of this there is no evidence. He certainly never thought of repudiating or abandoning his character of a Scotchman. He did not cease to take an interest in his native place: he would probably have been glad to attach his name permanently in some conspicuous manner to Edinburgh, the place of his birth and education, notwithstanding the disgust which he had expressed on leaving it. He paid it two or three transient visits, but I find no trace whatever of his having altered the resolution which he had so strongly expressed, to abandon it; and, on the whole, I am of opinion, that the fact of his residence in London was accompanied by a train of conduct and facts, so clearly manifesting his intention to reside there permanently or principally, and to make London the centre of his affairs and business, that it must be concluded that in and before the year 1828, London had become and was his domicile. He was a Scotchman born, educated in Scotland and domiciled there before 1817, but he afterwards abandoned Scotland as his residence, removed to England, and resided there, under such circumstances, and with such intentions, as to fix his domicile there.

Such being my opinion, the question then is, whether any alteration afterwards took place? The failure of his health, and that of his wife, and perhaps considerations of economy, seem to have been the sole reason for their subsequent movements, whether they were together or separate. They went to the Continent at first, for longer

or shorter, or uncertain periods, plainly without any fixed or settled plan, and without any intention of arranging for the transaction of anything but occasional business elsewhere than in London. He left there his letters, papers and deeds, his library, and some furniture, and his stock of salable works; and arrangements were made with reference to his being absent only for a short time; and what happened on his subsequent visits to London, and particularly in the visit of 1833, tends much more to corroborate the notion that he considered London to be his home, than to favour the idea of any change of plan. It does not appear to me to be necessary to follow his movements and correspondence in minute detail. There is, I think, nothing to show any intention to change his domicile in the legal sense of the word. But the exceptant relies very much on the testator's residence at Paris in and after the year 1837; and it seems that in July 1837 he agreed to take a lease of apartments in Paris for three, six, or nine years, at the option of lessor or lessee, each party being allowed to determine the lease, on giving six months' notice before the expiration of the three or six first years of the lease, to be reckoned from the first day of October then next. In the apartment comprised in that lease he died soon after the expiration of the first three years. He visited England in the year 1840. When there he gave directions as to the transaction of his affairs, and instructed his solicitor (Mr. Braikenridge) to prepare his will, which was to be sent after him to Paris, to which place he returned in October of the same year.

The draft of his will was prepared in the English form,

which would naturally be adopted by Mr. Braikenridge in the absence of any instructions to the contrary. It can, however, have no weight as evidence in this case, that Mr. Braikenridge did not know or consider that the testator was not domiciled in England. It does not appear that the testator was himself aware that the place of his domicile was material to be considered in determining the form of his will.

Before Mr. Braikenridge's draft arrived at Paris, the testator employed Mr. Lawson to prepare a will for him there; and Mr. Lawson also prepared the will in the English form. He did this after endeavouring to ascertain the testator's domicile; but I think that it would not be safe to attach much weight to this evidence. Whether the testator had domiciled in England does not depend on evidence of this sort, or of any facts then occurring. That was established, as I think, before the year 1828; and in 1840 the question was, whether the testator had changed his domicile since his English domicile was acquired? But the exceptant has relied on the description of himself, which the testator adopted and caused to be inserted in his will. On the 8th of December 1840, Mr. Lawson had described him as "Doctor of Laws and Literature, late a Surgeon in the Honourable East India Company's service, on their Bengal establishment, now residing at No. at Paris, in the Kingdom of France." The testator altered this, and caused himself to be described as "John Borthwick Gilchrist, of the city of Edinburgh, but now residing at No. 18, Rue Matignon, in the city of Paris, in France, Doctor of Laws, formerly for many years in the medical service of the

East India Company, in Bengal, and one of the Professors in the Oriental College of Calcutta, and author of many works on the Oriental Languages."

"Of the city of Edinburgh," are the only words of any importance in this description ; they are consistent with and may indicate the fact that the testator was born there. It was formerly very common for authors and persons desiring distinction, to designate themselves by the names of the place of their origin. The instances in which this was done are too numerous and well known to make it necessary to give examples ; but it is unnecessary to consider this as no description which the testator could have given of himself, nor would it, by itself, have had any effect in determining his domicile.

In the course of the argument, it seems to have been considered that the testator could not acquire a domicile without repudiating his nationality, his character or quality of Scotchman, in a country where he was only a lodger and not a housekeeper ; for these notions there is no foundation in law.

And on a consideration of the whole case, I am of opinion that the testator, a native Scotchman, was domiciled in Scotland in 1817, and afterwards became domiciled in England, and was so in 1827. That his English domicile was not changed, and that he was domiciled in England at the time of his death.

The exceptions must, therefore, be disallowed.

Extract from LORD LANGDALE'S Judgment in the Suit of the ATTORNEY-GENERAL *v.* CAIUS COLLEGE, CAMBRIDGE, referred to in vol. i. p. 300.

"THE foundation of the charity being such as I have stated, it appears from the proceedings in this cause, that there have been considerable errors and irregularities in the management of the property, in the distribution of the income, and more particularly in the conduct and management of the school. The defendants admit at the bar that it has been so, and that they are so far from interposing any obstacle to the due regulation of the charity, that they offer to give every facility for that purpose.

Under these circumstances, it is clear that there must be a reference to the Master to approve of a scheme for the application of the income of the property belonging to this foundation, and for the conduct and managing of the school, and that there must be an account of the receipts and payments of the defendants. But the relators, in the name of the Attorney-General, insist that besides this relief, the Masters and Fellows of the college ought not to be allowed to act any longer as trustees of the property, and that as against the Master and one of the Fellows, the account ought to be carried much further back than the filing of the information. And some questions are raised respecting the declarations which ought to be made for the guidance of the Master in the settling the schemes respecting the proper inquiries for ascertaining the property, and respecting the costs of the suit.

Upon the question, Whether there ought to be new trustees? I am of opinion, that I ought not to apply to the case any such general principles or general reasonings as have been urged at the bar. It is not for me to consider whether corporations or colleges are or are not in a general view well or ill qualified to be trustees. The founders of many charitable institutions have thought fit to appoint colleges to be trustees of their foundations; the law has allowed this to be done, and Courts of Equity are not, in my opinion, at liberty to say that this shall not be done, upon the notion that when individuals are trustees, you have a greater personal responsibility,—how little that personal liability is in many cases available, experience shows us,—but I consider it clear that these are not considerations which this Court is at liberty to resort to on such questions. And I cannot admit the validity of the argument which, after collecting all the errors and misapplications which, after a careful examination of the original documents, appear to have been committed by the present members of a college or corporation and their predecessors for two centuries past, affirms that every error was wilfully committed, and infers from the total amount of them that the present members of the college or corporation, and their successors in all time to come, are and will be incompetent faithfully to fulfil the office of trustees; and, on the other hand, when I see how anxiously the founder in this case has connected his foundation with the college, and the utter impossibility of separating one from the other without defeating his plain and manifest intention, I conceive it to be perfectly clear that the college cannot be removed from the office of trustee

on any of the grounds stated, and it does not appear to me that the circumstances of this case make it fit to accede to the proposal which has been made to appoint new trustees, without prejudice to the rights of the college as supervisors, or that any real advantage would be gained by it. It seems to me that whatever regulations might be made in that respect, the effective administration must consistently with the testator's intention, substantially remain with the college, and that, after all, the right of resorting to this Court would, as in other cases of trust, afford the only real and effective security for the due administration of the trust.

With respect to the accounts: As against the college and the defendants, Messrs. Turnbull, Musgrave, Houlditch, and Thurtell, nothing more is asked than an account from the filing of the Bill. But with respect to the Master of the college and Dr. Woodhouse, it is asked that they should be ordered to refund certain sums which they have received beyond the amount of what was justly payable to them.

As to the allegation on which this demand is made, I am under the necessity of saying, that after considering the nature of this foundation, and the facts stated in the answer, it does in my present view of the case appear to me, that considerable overpayments were made to the Master and four senior Fellows before the year 1830; but notwithstanding that, considering all the circumstances of this case, that the first deviation from the letter of the will in favour of the Master and four senior Fellows was made (in the year 1787) before the present Master was a member of the college; that the alterations in 1804 and in

1812, in which the present Master concurred, were made in conjunction with the four senior Fellows of those times respectively, and who are now before the Court; that the alteration in 1825, in which the present Master and Dr. Woodhouse partook, were made in concurrence with three other senior Fellows, who are not now before the Court, and one of whom has been dismissed from the suit since its institution; considering further, that the amount which in reference to all the circumstances of this case the Master and four senior Fellows might have been justified in receiving, has not been ascertained, but is now subject to question, so that the amount of the overpayment is even at this time unknown; and conceiving that the excess cannot, under the circumstances of this case, be fairly measured by the advance from the previous payment, and also considering that in 1830, when the objectionable nature of what had been done was first brought to the attention of the Master and four senior Fellows, a correction (whether adequate or not) was *bonâ fide* undertaken to be applied, and was in fact applied; having regard to the admissions properly made at the bar, that no corruption or improper motives is chargeable against any of the parties in this cause, and that every facility is now offered in placing the matter upon a proper footing, I am of opinion that I should deviate from the principles on which the Court has acted in such cases, if I were to direct the account to be carried back against the Master and Dr. Woodhouse in the manner that has been asked.

With respect to the declarations which ought to be made, it appears to me that they should be so far parti-

cular as to call the attention of the Master distinctly to the property to be applied, and to the purposes to which it is applicable; and under the circumstances of this case, I think that I cannot properly make a decree leaving to the defendants so much discretion as was done in the case of Jemmit *v.* Verril (Ambler. 585 *n.*). I therefore propose to declare almost in the terms which have been asked by the relators in the name of the Attorney-General.

The costs of the suit remain to be considered. The relators must have their costs out of the fund. They do not ask any costs against the defendants, but they desire that all the defendants should be made to bear their own costs of these proceedings.

On what ground this is desired against the defendants Messrs. Turnbull, Musgrave, Houlditch, and Thurtell, has not been stated; it is desired against the college, the Master of the college, and Dr. Woodhouse, on account of their participation in those acts which now appear to be breaches of trust.

I should be sorry to say anything from which it could be inferred that corporations and colleges are not bound strictly to perform the trusts they undertake; but it is evident that in charging corporations consisting of fluctuating members, they cannot be dealt with as individual persons, for by doing so, we should visit the present members with the consequences of errors committed by their predecessors, whom they do not in any respect represent, and in every case of this sort we must look at all the circumstances; there are errors and misapplications such as have been dwelt on at the bar; all of them had their

origin before any of the present defendants came into the college; some of them have been greatly aggravated since, and what has been done, particularly in regard to the school and the school-house, cannot be considered without very great regret; but it appears to me clear from the answers, that in the ignorance in which all parties were as to the particular regulations which they ought to have followed or made, they really, when they were acting most erroneously, thought themselves acting fairly, even with regard to the school, and at liberty to do all that they did.

Their attention was never seriously drawn to the subject till 1830, and they then began to inquire for the documents by which they were to be guided. They were prosecuting those inquiries, and obtaining the advice necessary for their guidance, when, without any previous application being made to them, this information was filed, and their proceedings were arrested. In 1830 they had, without suit, altered the distribution, which has been, as I think, justly complained of; they then adopted a new distribution, the propriety of which is certainly open to question, but which was meant to put an end to all breach of trusts, and, for anything that I can clearly see to the contrary, they might, from the course they were in, have proceeded to place (as it undoubtedly was their duty to place) the school upon a proper footing, without the interposition of this Court. Moreover, notwithstanding the errors committed, the college, as trustees, have by their care accumulated from the income of this property the several funds mentioned in the answer of Mr. Thurtell, *viz.*, 25,100*l.* 3 per Cent. Annuities, 2400*l.* South Sea Annuities, and 5000*l.* Exchequer Bills.

This accumulation is (amidst all the errors which have been committed) the result of the care and economy of the trustees, and now remains applicable to the purposes of the foundation, to the great advantage, as I hope, of the school and the other objects of the testator's bounty.

Under all these circumstances, though I certainly have hesitated very much, yet, on the whole, it appears to me that I shall not do wrong in allowing these defendants their costs of this suit out of the fund which has been accumulated and preserved for the foundation by the care and economy of themselves and their predecessors.

THE END.

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